# CHAPTER 66
# Motor Vehicles

## ARTICLE 1
## General Provisions

### 66-1-1. Short title.

Articles 1 through 8 of Chapter 66 NMSA 1978 [except 66-7-102.1 NMSA 1978] may be cited as the "Motor Vehicle Code".

**History:** 1953 Comp., § 64-1-1, enacted by Laws 1978, ch. 35, § 1.

**ANNOTATIONS**

**Constitutionality.** — The former Motor Vehicle Act was not constitutionally objectionable under N.M. Const., art. IV, § 16. The mere inclusion of other provisions logically within the scope of the title and relating to the general subject of motor vehicles did not violate the "one subject" restriction. *State v. Roybal*, 1960-NMSC-012, 66 N.M. 416, 349 P.2d 332.

**Municipalities may adopt motor vehicle ordinances** notwithstanding state statutes cover the same subjects and provide penalties for violations. 1960 Op. Att'y Gen. No. 60-218.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Validity, construction, and effect of statutes or ordinances forbidding automotive "cruising" - practice of driving repeatedly through loop of public roads through city, 87 A.L.R.4th 1110.

### 66-1-2. Severability.

If any part or application of the Motor Vehicle Code is held invalid, the remainder, or its application to other situations or persons, shall not be affected.

**History:** 1953 Comp., § 64-1-2, enacted by Laws 1978, ch. 35, § 2.

### 66-1-3. Savings clauses.

A. All valid certificates of title issued under the provisions of previously existing laws shall continue in effect and shall be considered as having been issued under the provisions of the Motor Vehicle Code.

B. All registration cards and registration plates issued under the provisions of previously existing laws shall continue to be valid until their expiration or termination as determined by the prior law.

C. All liens and bonds filed under the provisions of previously existing laws shall continue to be valid until their expiration or termination as determined by the prior law.

D. All licenses and all demonstration numbers, special plates and special permits issued under the provisions of previously existing law shall continue to be valid until their expiration or termination as determined by the prior law.

E. The division is directed to administer the provisions of previously existing laws to effect the provisions of this section.

**History:** 1953 Comp., § 64-1-3, enacted by Laws 1978, ch. 35, § 3; 1987, ch. 268, § 16.

## 66-1-4. Definitions.

A. Sections 66-1-4.1 through 66-1-4.20 NMSA 1978 define terms for general purposes of the Motor Vehicle Code. When in a specific section of the Motor Vehicle Code a different meaning is given for a term defined for general purposes in Sections 66-1-4.1 through 66-1-4.20 NMSA 1978, the specific section's meaning and application of the term shall control.

B. All references in the Motor Vehicle Code and elsewhere in the NMSA 1978 to Section 66-1-4 NMSA 1978 shall be construed to include Sections 66-1-4.1 through 66-1-4.20 NMSA 1978.

C. All references in the NMSA 1978 to the "department of motor vehicles" or "department" shall, whenever appropriate, mean the taxation and revenue department.

D. All references in the NMSA 1978 to the "commissioner of motor vehicles" or "commissioner" shall, whenever appropriate, mean the secretary.

**History:** 1953 Comp., § 64-1-4, enacted by Laws 1978, ch. 35, § 4; 1979, ch. 71, § 1; 1981, ch. 361, § 2; 1983, ch. 295, § 27; 1987, ch. 250, § 1; 1987, ch. 268, § 17; 1988, ch. 56, § 2; 1989, ch. 318, § 1; 1990, ch. 120, § 1; 1991, ch. 160, § 1.

**ANNOTATIONS**

**The 1991 amendment,** effective July 1, 1991, deleted "motor vehicle division of the" preceding "taxation" in Subsection C and substituted "secretary" for "director of the division" at the end of Subsection D.

**The 1990 amendment,** effective July 1, 1990, in Subsection A, added the first sentence and substituted "Sections 66-1-4.1 through 66-1-4.20 NMSA 1978" for "this section" in

the present second sentence, deleted former Subsection B setting forth definitions of words and terms used in the Motor Vehicle Code and added present Subsections B to D.

**The 1989 amendment,** effective July 1, 1989, rewrote Subsection B(1); in Subsection B(20), substituted "identified by a" for "sufficiently bounded by a fence, chain, posts or other fence of wall material, the top of which shall be twelve inches above the ground so as to definitely indicate the boundary thereof, and within which boundary is" in Subparagraph (b); substituted "forty" for "thirty-two" in Subsection B(32); and inserted "and may include a conservator, guardian, personal representative, executor or similar fiduciary" in Subsection B(44).

**The 1988 amendment,** effective July 1, 1988, substituted "in Paragraph (20) of this subsection" for "herein" in Subsection B(2); in Subsection B(22), substituted "person who for the first time under state or federal law or municipal ordinance has been adjudicated guilty" for "person who has been convicted in a trial court under state or federal law or municipal ordinance", deleted "narcotic drug" following "liquor", deleted "other" preceding "drug", inserted "safely" preceding "driving a motor vehicle", and substituted "regardless of whether the person's sentence was suspended or deferred" for "and includes a person who pled guilty to the charge or pled nolo contendere to the charge, whether or not his sentence was suspended or deferred, or a person who was convicted, pled guilty or nolo contendere, but had such conviction dismissed by virtue of his attendance at, and successful completion of, a driver rehabilitation program or a 'driving-while-intoxicated school'"; and rewrote Subsection B(64).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 1.

Airplane or other aircraft as "motor vehicle" or the like within statute providing for constructive or substituted service of process on nonresident motorist, 36 A.L.R.3d 1387.

What constitutes ownership of automobile within the meaning of automobile insurance owner's policy, 36 A.L.R.4th 7.

What is "temporary" building or structure within meaning of restrictive covenant, 49 A.L.R.4th 1018.

60 C.J.S. Motor Vehicles § 1.

## 66-1-4.1. Definitions.

As used in the Motor Vehicle Code:

A. "abandoned vehicle" means a vehicle or motor vehicle that has been determined by a New Mexico law enforcement agency:

(1) to have been left unattended on either public or private property for at least thirty days;

(2) not to have been reported stolen;

(3) not to have been claimed by any person asserting ownership; and

(4) not to have been shown by normal record-checking procedures to be owned by any person;

B. "access aisle" means a space designed to allow a person with a significant mobility limitation to safely exit and enter a motor vehicle that is immediately adjacent to a designated parking space for persons with significant mobility limitation and that may be common to two such parking spaces of at least sixty inches in width or, if the parking space is designed for van accessibility, ninety-six inches in width, and clearly marked and maintained with blue striping and, after January 1, 2011, the words "NO PARKING" in capital letters, each of which shall be at least one foot high and at least two inches wide, placed at the rear of the access aisle so as to be close to where an adjacent vehicle's rear tires would be placed;

C. "actual empty weight" means the weight of a vehicle without a load;

D. "additional place of business", for dealers and auto recyclers, means locations in addition to an established place of business as defined in Section 66-1-4.5 NMSA 1978 and meeting all the requirements of an established place of business, except Paragraph (5) of Subsection C of Section 66-1-4.5 NMSA 1978, but "additional place of business" does not mean a location used solely for storage and that is not used for wrecking, dismantling, sale or resale of vehicles;

E. "alcoholic beverages" means any and all distilled or rectified spirits, potable alcohol, brandy, whiskey, rum, gin, aromatic bitters or any similar alcoholic beverage, including all blended or fermented beverages, dilutions or mixtures of one or more of the foregoing containing more than one-half percent alcohol but excluding medicinal bitters;

F. "authorized emergency vehicle" means any fire department vehicle, police vehicle and ambulance and any emergency vehicles of municipal departments or public utilities that are designated or authorized as emergency vehicles by the director of the New Mexico state police division of the department of public safety or local authorities;

G. "autocycle" means a three-wheeled motorcycle on which the driver and all passengers ride in a completely or partially enclosed seating area and that is manufactured to comply with all applicable federal standards, regulations and laws and is equipped with:

(1) non-straddle seating;

(2) rollover protection;

(3) safety belts for all occupants;

(4) antilock brakes;

(5) a steering wheel; and

(6) pedals;

H. "automated driving system" means the hardware and software that are collectively capable of performing the entire dynamic driving task on a sustained basis, regardless of whether it is limited to a specific operational design domain; "automated driving system" is used specifically to describe a level three, four or five driving automation system as defined in society of automotive engineers standard J3016, as published in the Taxonomy and Definitions for Terms Related to Driving Automation Systems for On-Road Motor Vehicles;

I. "autonomous commercial motor vehicle" means a commercial motor vehicle, as defined in Subsection J of Section 66-1-4.3 NMSA 1978, that is being controlled by an automated driving system;

J. "autonomous motor vehicle" means a motor vehicle that is being controlled by an automated driving system;

K. "autonomous motor vehicle operator" means the person who engages the automated driving system of an autonomous motor vehicle or autonomous commercial motor vehicle;

L. "autonomous motor vehicle testing" or "autonomous commercial motor vehicle testing" means activities taken in full or in part to evaluate and assess:

(1) the automated driving system's performance of the dynamic driving task; and

(2) the automated driving system's performance with respect to applicable safety areas as defined by the federal national highway traffic safety administration for autonomous vehicle operations; and

M. "auto recycler" means a person engaged in this state in an established business that includes acquiring vehicles that are required to be registered under the Motor Vehicle Code for the purpose of dismantling, wrecking, shredding, compacting, crushing or otherwise destroying vehicles for reclaimable parts or scrap material to sell.

**History:** 1978 Comp., § 66-1-4.1, enacted by Laws 1990, ch. 120, § 2; 1999, ch. 297, § 4; 2005, ch. 324, § 1; 2007, ch. 319, § 2; 2010, ch. 74, § 2; 2011, ch. 78, § 1; 2015, ch. 53, § 2; 2017, ch. 54, § 1; 2021, ch. 114, § 1.

## ANNOTATIONS

**The 2021 amendment,** effective July 1, 2022, defined "automated driving system", "autonomous commercial motor vehicle", "autonomous motor vehicle", "autonomous motor vehicle operator", and "autonomous motor vehicle testing", as used in the Motor Vehicle Code; and added new Subsections H through L and redesignated former Subsection H as Subsection M.

**The 2017 amendment,** effective June 16, 2017, revised the definition of "autocycle" as used in the Motor Vehicle Code; in Subsection G, in the introductory clause, after "completely", added "or partially", after "enclosed", deleted "tandem", after "seating area", added "and", after "that", added "is manufactured to comply with all applicable federal standards, regulations and laws", in Paragraph G(1), deleted "federal motor vehicle safety standard 571.205 glazing" and added "non-straddle seating", in Paragraph G(2), deleted "a roll cage" and added "rollover protection", and deleted Paragraph G(4) and redesignated the succeeding paragraphs accordingly.

**The 2015 amendment,** effective June 19, 2015, defined "autocycle", as used in the Motor Vehicle Code; in Subsection G, added the language defining "autocycle"; and designated the language that was formerly in Subsection G as Subsection H.

**The 2011 amendment,** effective June 17, 2011, in Subsection B, changed "parking space" to "access aisle".

**The 2010 amendment,** effective May 19, 2010, in Subsection B, after "clearly marked", added "and maintained" and after "with blue striping", added the remainder of the sentence.

**The 2007 amendment,** effective June 15, 2007, added the definition of "actual empty weight" in a new Subsection C.

**The 2005 amendment,** effective January 1, 2006, changed "wreckers of vehicles" to "auto recyclers" in Subsection C and added Subsection F to define "auto recycler".

**The 1999 amendment,** effective June 18, 1999, added Subsection B and redesignated former Subsections B to D as Subsections C to E.

**A police vehicle showing red lights or sounding a siren is an emergency vehicle** and all approaching or pursued vehicles are required to stop. 1959 Op. Att'y Gen. No. 59-20.

**Volunteer fireman's private vehicle can be "authorized emergency vehicle".** — A privately owned vehicle of a volunteer fireman can be designated as an authorized emergency vehicle. 1969 Op. Att'y Gen. No. 69-71.

## 66-1-4.2. Definitions.

As used in the Motor Vehicle Code:

A. "bicycle" means every device propelled by human power upon which any person may ride, having two tandem wheels, except scooters and similar devices;

B. "bureau" means the traffic safety bureau of the department of transportation;

C. "bus" means every motor vehicle designed and used for the transportation of persons and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation; and

D. "business district" means the territory contiguous to and including a highway when within any three hundred feet along the highway there are buildings in use for business or industrial purposes, including but not limited to hotels, banks or office buildings, railroad stations and public buildings that occupy at least fifty percent of the frontage on one side or fifty percent of the frontage collectively on both sides of the highway.

**History:** 1978 Comp., § 66-1-4.2, enacted by Laws 1990, ch. 120, § 3; 1993, ch. 68, § 38; 2015, ch. 3, § 33.

**ANNOTATIONS**

**The 2015 amendment,** effective July 1, 2015, amended certain definitions in the Motor Vehicle Code to reflect the reorganization of the department of public safety; in Subsection B, after "bureau of the", deleted "state highway and" and added "department of", and after "transportation", deleted "department".

**The 1993 amendment,** effective July 1, 1993, inserted present Subsection B and redesignated former Subsections B and C as Subsections C and D.

**Frontage of buildings within 300-foot area is what determines** whether the scene of an accident is within a residential or business district rather than the combined area of the buildings and yards. *Floeck v. Hoover*, 1948-NMSC-021, 52 N.M. 193, 195 P.2d 86.

**Not error to refuse instruction where definitional criteria not met.** — Where a total distance of 640.9 feet, 396.5 feet was found to be building frontage that within any given 300-foot distance the building frontage was less than 50%, and there was no substantial evidence that the area in question was a business district, the trial judge's refusal to

allow instruction on defining area as a business district was not error. *Stoll v. Galles Motor Co.*, 1955-NMSC-097, 60 N.M. 186, 289 P.2d 626.

## 66-1-4.3. Definitions.

As used in the Motor Vehicle Code:

A. "camping body" means a vehicle body primarily designed or converted for use as temporary living quarters for recreational, camping or travel activities excluding recreational vehicles unless used in commerce;

B. "camping trailer" means a camping body, mounted on a chassis, or frame with wheels, designed to be drawn by another vehicle and that has collapsible partial side walls that fold for towing and unfold at the campsite;

C. "cancellation" means that a driver's license is annulled and terminated because of some error or defect or because the licensee is no longer entitled to the license, but cancellation of a license is without prejudice, and application for a new license may be made at any time after cancellation;

D. "casual sale" means the sale of a motor vehicle by the registered owner of the vehicle if the owner has not sold more than four vehicles in that calendar year;

E. "chassis" means the complete motor vehicle, including standard factory equipment, exclusive of the body and cab;

F. "collector" means a person who is the owner of one or more vehicles of historic or special interest who collects, purchases, acquires, trades or disposes of these vehicles or parts thereof for the person's own use in order to preserve, restore and maintain a similar vehicle for hobby purposes;

G. "combination" means any connected assemblage of a motor vehicle and one or more semitrailers, trailers or semitrailers converted to trailers by means of a converter gear;

H. "combination gross vehicle weight" means the sum total of the gross vehicle weights of all units of a combination;

I. "commerce" means the transportation of persons, property or merchandise for hire, compensation, profit or in the furtherance of a commercial enterprise in this state or between New Mexico and a place outside New Mexico, including a place outside the United States;

J. "commercial motor vehicle" means a self-propelled or towed vehicle, other than special mobile equipment, used on public highways in commerce to transport passengers or property when the vehicle:

(1) is operated interstate and has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of four thousand five hundred thirty-six kilograms, or ten thousand one pounds or more; or is operated only in intrastate commerce and has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of twenty-six thousand one or more pounds;

(2) is designed or used to transport more than eight passengers, including the driver, and is used to transport passengers for compensation;

(3) is designed or used to transport sixteen or more passengers, including the driver, and is not used to transport passengers for compensation; or

(4) is used to transport hazardous materials of the type or quantity requiring placarding under rules prescribed by applicable federal or state law;

K. "controlled-access highway" means every highway, street or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the highway, street or roadway except at those points only and in the manner as may be determined by the public authority having jurisdiction over the highway, street or roadway;

L. "controlled substance" means any substance defined in Section 30-31-2 NMSA 1978 as a controlled substance;

M. "converter gear" means any assemblage of one or more axles with a fifth wheel mounted thereon, designed for use in a combination to support the front end of a semitrailer but not permanently attached thereto. A converter gear shall not be considered a vehicle, as that term is defined in Section 66-1-4.19 NMSA 1978, but weight attributable thereto shall be included in declared gross weight;

N. "conviction":

(1) means:

(a) a finding of guilt in the trial court in regard to which the violator has waived or exhausted all rights to appeal;

(b) a plea of guilty or nolo contendere accepted by the court;

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

(d) the promise to mail a payment on a penalty assessment; and

(2) does not include a conditional discharge as provided in Section 31-20-13 NMSA 1978 or a deferred sentence when the terms of the deferred sentence are met;

O. "crosswalk" means:

(1) that part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or, in the absence of curbs, from the edges of the traversable roadway; and

(2) any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface; and

P. "curb cut" means a short ramp through a curb or built up to the curb.

**History:** 1978 Comp., § 66-1-4.3, enacted by Laws 1990, ch. 120, § 4; 1998, ch. 34, § 1; 2001, ch. 127, § 1; 2003, ch. 10, § 3; 2005, ch. 312, § 1; 2007, ch. 321, § 1; 2009, ch. 200, § 3.

**ANNOTATIONS**

**The 2009 amendment,** effective July 1, 2009, in Subsection A, after "travel activities", added the remainder of the sentence; in Subsection N, deleted the former definition of "conviction"; added Subparagraphs (a) through (d) of Paragraph (1) of Subsection N; and added Paragraph (2) of Subsection N.

**The 2007 amendment,** effective April 2, 2007, amended Subsection N to delete from the definition of "conviction" the requirement that a person with a commercial drivers license be found by an authorized administrative tribunal to be guilty of a violation of the Implied Consent Act and to add Paragraph (6) to include within the definition of "conviction" an assignment to a diversion program or a driver improvement program.

**The 2005 amendment,** effective July 1, 2005, deleted the former definition of "conviction" in Subsection N to mean the violator has entered a plea of guilty or nolo contendere or has been found guilty in a trial court and has waived or exhausted all rights of appeal and added the definition of "conviction" in Subsections N(1) through (6).

**The 2003 amendment,** effective July 1, 2003, rewrote Subsection J.

**The 2001 amendment,** effective June 15, 2001, deleted "that exceeds neither eight feet in width nor forty feet in length" following "camping body" from Subsection B.

**The 1998 amendment,** effective July 1, 1998, deleted Subsection E, relating to certified motor vehicle liability policy, redesignated the remaining subsections accordingly, and, in Subsection N, inserted "has".

## 66-1-4.4. Definitions.

As used in the Motor Vehicle Code:

A. "day" means calendar day, unless otherwise provided in the Motor Vehicle Code;

B. "dealer", except as specifically excluded, means any person who sells or solicits or advertises the sale of new or used motor vehicles, manufactured homes or trailers subject to registration in this state; "dealer" does not include:

(1) receivers, trustees, administrators, executors, guardians or other persons appointed by or acting under judgment, decree or order of any court;

(2) public officers while performing their duties as such officers;

(3) persons making casual sales of their own vehicles;

(4) finance companies, banks and other lending institutions making sales of repossessed vehicles; or

(5) licensed brokers under the Manufactured Housing Act [Chapter 60, Article 14 NMSA 1978] who, for a fee, commission or other valuable consideration, engage in brokerage activities related to the sale, exchange or lease purchase of pre-owned manufactured homes on a site installed for a consumer;

C. "declared gross weight" means the maximum gross vehicle weight or gross combination vehicle weight at which a vehicle or combination will be operated during the registration period, as declared by the registrant for registration and fee purposes; the vehicle or combination shall have only one declared gross weight for all operating considerations;

D. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

E. "designated accessible parking space for persons with significant mobility limitation" means any space, including an access aisle, that is marked and reserved for the parking of a passenger vehicle that carries registration plates or a parking placard with the international symbol of access issued in accordance with Section 66-3-16 NMSA 1978 and that is designated by a conspicuously posted sign bearing the international symbol of access and, if the parking space is paved, by a clearly visible depiction of this symbol painted in blue on the pavement of the space;

F. "director" means the secretary;

G. "disqualification" means a prohibition against driving a commercial motor vehicle;

H. "distinguishing number" means the number assigned by the department to a vehicle whose identifying number has been destroyed or obliterated or the number assigned by the department to a vehicle that has never had an identifying number;

I. "distributor" means a person who distributes or sells new or used motor vehicles to dealers and who is not a manufacturer;

J. "division", without further specification, "division of motor vehicles" or "motor vehicle division" means the department;

K. "driveaway-towaway operation" means an operation in which any motor vehicle, new or used, is the item being transported when one set or more of wheels of any such motor vehicle is on the roadway during the course of transportation, whether or not the motor vehicle furnishes the motive power;

L. "driver" means every person who drives or is in actual physical control of a motor vehicle, including a motorcycle, upon a highway, who is exercising control over or steering a vehicle being towed by a motor vehicle or who operates or is in actual physical control of an off-highway motor vehicle;

M. "driver-assisted platoon" means a series of motor vehicles platooning with a driver in each vehicle;

N. "driver's license" means any license, permit or driving authorization card issued by a state or other jurisdiction recognized under the laws of New Mexico pertaining to the authorizing of persons to operate motor vehicles and includes a REAL ID-compliant driver's license and a standard driver's license; and

O. "dynamic driving task" means all of the real-time operational and tactical functions required to operate a vehicle in on-road traffic, excluding the strategic functions such as trip scheduling and selection of destinations and waypoints.

**History:** 1978 Comp., § 66-1-4.4, enacted by Laws 1990, ch. 120, § 5; 1991, ch. 160, § 2; 1999, ch. 297, § 5; 2007, ch. 319, § 3; 2016, ch. 79, § 1; 2019, ch. 167, § 1; 2021, ch. 114, § 2.

## ANNOTATIONS

**The 2021 amendment,** effective July 1, 2022, defined "driver-assisted platoon" and "dynamic driving task", as used in the Motor Vehicle Code; added a new Subsection M and redesignated former Subsection M as Subsection N; and added Subsection O.

**The 2019 amendment,** effective October 1, 2019, defined "driveaway-towaway operation", redefined "driver's license", and removed the definitions of certain terms, for purposes of the Motor Vehicle Code; added a new Subsection K and redesignated

former Subsection K as Subsection L; deleted former Subsections L through N; and added a new Subsection M.

**The 2016 amendment,** effective May 18, 2016, amended the definition of "driver's license" and added a definition for "driving authorization card" as used in the Motor Vehicle Code; in Subsection L, after "state or other jurisdiction", deleted "to an individual that authorizes the individual to drive a motor vehicle; and" and added "pertaining to the authorizing of persons to operate motor vehicles and that meets federal requirements to be accepted by federal agencies for official federal purposes"; and added a new Subsection N.

**The 2007 amendment,** effective June 15, 2007, changed "designated disabled parking space" to "designated accessible parking space for persons with significant mobility limitation" and required that vehicles carry registration plates or a parking placard with an international symbol of access.

**The 1999 amendment,** effective June 18, 1999, in Subsection E, rewrote the definition of "designated disabled parking space" to include an access aisle, inserted "parking" before "placard", substituted "and designated" for "such a place shall be designated", substituted "wheelchair and if paved" for "wheelchair or", and inserted "in blue".

**The 1991 amendment,** effective July 1, 1991, substituted "secretary" for "head of the division" in Subsection F; substituted "department" for "division" in two places in Subsection H; and rewrote Subsection J, which read " 'division' ", without further specification, or 'division of motor vehicles', means the motor vehicle division of the department, the director or any employee of the division exercising authority lawfully delegated to that employee by the director."

**Driveaway-towaway saddle mount combinations towing over one vehicle illegal.** — State highway commission cannot legally issue permits for the movement of trucks in driveaway-towaway saddle mount combinations of more than one towed vehicle. 1959 Op. Att'y Gen. No. 59-38.

**Trailer or bus manufacturer.** — Any trailer or bus manufacturer who sells three or more trailers or buses directly to individuals or companies in any calendar year is a "dealer" within the meaning of the Motor Vehicle Code and is eligible for a motor vehicle dealer's license. 1979 Op. Att'y Gen. No. 79-31.

**Having charge of vehicle controls on highway.** — The actual physical handling of the controls is clearly synonymous in meaning to the driving or operating of a motor vehicle and a person may be liable under the law whether the vehicle is in motion on the highways or not depending upon the circumstances. The primary test seems to depend upon whether the vehicle is being driven, operated or handled upon the public highways by an intoxicated person having charge of the controls of the vehicle. 1953 Op. Att'y Gen. No. 53-5858.

**Law reviews.** — For comment, "Implied Consent in New Mexico," see 10 Nat. Resources J. 378 (1970).

## 66-1-4.5. Definitions.

As used in the Motor Vehicle Code:

A. "electric-assisted bicycle" means a vehicle having two or three wheels, fully operable pedals and an electric motor. Electric-assisted bicycles are classified as follows:

(1) "class 1 electric-assisted bicycle" means an electric-assisted bicycle equipped with a motor not exceeding seven hundred fifty watts of power that provides assistance only when the rider is pedaling and that ceases to provide assistance when the bicycle reaches a speed of twenty miles per hour;

(2) "class 2 electric-assisted bicycle" means an electric-assisted bicycle equipped with a motor not exceeding seven hundred fifty watts of power that provides assistance regardless of whether the rider is pedaling but ceases to provide assistance when the bicycle reaches a speed of twenty miles per hour; and

(3) "class 3 electric-assisted bicycle" means an electric-assisted bicycle equipped with a motor not exceeding seven hundred fifty watts of power that provides assistance only when the rider is pedaling and that ceases to provide assistance when the bicycle reaches a speed of twenty-eight miles per hour;

B. "electric mobility device" means a two- or three-wheel vehicle with an electric motor for propulsion that does not meet the definition of an electric-assisted bicycle and is capable of exceeding a speed of twenty miles per hour on motor power alone;

C. "electric personal assistive mobility device" means a self-balancing device having two nontandem wheels designed to transport a single person by means of an electric propulsion system with an average power of one horsepower and with a maximum speed on a paved level surface of less than twenty miles per hour when powered solely by its propulsion system and while being ridden by an operator who weighs one hundred seventy pounds;

D. "essential parts" means all integral and body parts of a vehicle of a type required to be registered by the provisions of the Motor Vehicle Code, the removal, alteration or substitution of which would tend to conceal the identity of the vehicle or substantially alter its appearance, model, type or mode of operation;

E. "established place of business", for a dealer or auto recycler, means a place:

(1) devoted exclusively to the business for which the dealer or auto recycler is licensed and related business;

(2) identified by a prominently displayed sign giving the dealer's or auto recycler's trade name used by the business;

(3) of sufficient size or space to permit the display of one or more vehicles or to permit the parking or storing of vehicles to be dismantled or wrecked for recycling;

(4) on which there is located an enclosed building on a permanent foundation, which building meets the building requirements of the community and is large enough to accommodate the office or offices of the dealer or auto recycler and large enough to provide a safe place to keep the books and records of the dealer or auto recycler;

(5) where the principal portion of the business of the dealer or auto recycler is conducted and where the books and records of the business are kept and maintained; and

(6) where vehicle sales are of new vehicles only, such as a department store or a franchisee of a department store, as long as the department store or franchisee keeps the books and records of its vehicle business in a general office location at its place of business; as used in this paragraph, "department store" means a business that offers a variety of merchandise other than vehicles, and sales of the merchandise other than vehicles constitute at least eighty percent of the gross sales of the business; and

F. "explosives" means any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion and that contains any oxidizing and combustive units or other ingredients in such proportions, quantities or packing that an ignition by fire, friction, concussion, percussion or detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects or of destroying life or limb.

**History:** 1978 Comp., § 66-1-4.5, enacted by Laws 1990, ch. 120, § 6; 2005, ch. 324, § 2; 2007, ch. 319, § 4; 2023, ch. 93, § 2.

**ANNOTATIONS**

**The 2023 amendment,** effective July 1, 2023, defined "electric-assisted bicycle" and "electric mobility device"; and added new Subsections A and B and redesignated former Subsections A through D as Subsections C through F, respectively.

**The 2007 amendment,** effective June 15, 2007, added Subsection A defining "electric personal assistive mobility device".

**The 2005 amendment,** effective January 1, 2006, changed "wrecker of vehicles" and "wrecker" to "auto recycler".

## 66-1-4.6. Definitions.

As used in the Motor Vehicle Code:

A. "farm tractor" means every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines and other implements of husbandry;

B. "financial responsibility" means the ability to respond in damages for liability resulting from traffic accidents arising out of the ownership, maintenance or use of a motor vehicle of a type subject to registration under the laws of New Mexico, in amounts not less than specified in the Mandatory Financial Responsibility Act [66-5-201 to 66-5-239 NMSA 1978] or having in effect a motor vehicle insurance policy. "Financial responsibility" includes a motor vehicle insurance policy, a surety bond or evidence of a sufficient cash deposit with the state treasurer;

C. "first offender" means a person who for the first time under state or federal law or a municipal ordinance or a tribal law has been adjudicated guilty of the charge of driving a motor vehicle while under the influence of intoxicating liquor or any other drug that renders the person incapable of safely driving a motor vehicle, regardless of whether the person's sentence was suspended or deferred;

D. "flammable liquid" means any liquid that has a flash point of seventy degrees fahrenheit or less, as determined by a tagliabue or equivalent closed-cup test device;

E. "foreign jurisdiction" means any jurisdiction other than a state of the United States or the District of Columbia;

F. "foreign vehicle" means every vehicle of a type required to be registered under the provisions of the Motor Vehicle Code brought into this state from another state, territory or country; and

G. "freight trailer" means any trailer, semitrailer or pole trailer drawn by a truck tractor or road tractor, and any trailer, semitrailer or pole trailer drawn by a truck that has a gross vehicle weight of more than twenty-six thousand pounds, but "freight trailer" does not include manufactured homes, trailers of less than one-ton carrying capacity used to transport animals or fertilizer trailers of less than three thousand five hundred pounds empty weight.

**History:** 1978 Comp., § 66-1-4.6, enacted by Laws 1990, ch. 120, § 7; 1998, ch. 34, § 2; 2003, ch. 164, § 1.

## ANNOTATIONS

**The 2003 amendment,** effective July 1, 2003, substituted "a municipal ordinance or a tribal law" for "municipal ordinance" following "federal law or" in Subsection C.

**The 1998 amendment,** effective July 1, 1998, in Subsection B, substituted "or having in effect a motor vehicle insurance policy." for "the term" at the end of the first sentence,

and substituted "Financial responsibility includes a motor vehicle insurance policy" for "liability policy, a certified motor vehicle liability" in the last sentence; in Subsection G, substituted "freight trailer" for "the term" near the middle of the subsection; and made minor stylistic changes.

## 66-1-4.7. Definitions.

As used in the Motor Vehicle Code:

A. "gross combination vehicle weight" means the total of the gross vehicle weights of all units of a combination;

B. "gross combination weight rating" means the value specified by the manufacturer as the loaded weight of a combination; however, in the absence of a value specified by the manufacturer, the gross combination weight rating shall be determined by adding the gross vehicle weight rating of the power unit and the total weight of the towed unit or units and the load on those units;

C. "gross factory shipping weight" means the weight indicated on the manufacturer's certificate of origin;

D. "gross vehicle weight" means the weight of a loaded vehicle; and

E. "gross vehicle weight rating" means the value specified by the manufacturer as the loaded weight of a single vehicle.

**History:** 1978 Comp., § 66-1-4.7, enacted by Laws 1990, ch. 120, § 8; 2007, ch. 319, § 5.

**ANNOTATIONS**

**The 2007 amendment,** effective June 15, 2007, replaced the vehicle weight definitions with new definitions.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39A C.J.S. Highways, Streets and Bridges § 1; 60 C.J.S. Motor Vehicles §§ 1 to 8, 16.

## 66-1-4.8. Definitions.

As used in the Motor Vehicle Code:

A. "hazardous material" means a substance or material in a quantity and form that may pose an unreasonable risk to health, safety or property when transported in commerce;

B. "highway" or "street" means every way or place generally open to the use of the public as a matter of right for the purpose of vehicular travel, even though it may be temporarily closed or restricted for the purpose of construction, maintenance, repair or reconstruction;

C. "historic or special interest vehicle" means a vehicle of any age that, because of its significance, is being collected, preserved, restored or maintained by a collector as a leisure pursuit;

D. "horseless carriage" means a motor vehicle at least thirty-five years old that is owned as a collector's item and used solely for exhibition and educational purposes; and

E. "house trailer" means a manufactured home.

**History:** 1978 Comp., § 66-1-4.8, enacted by Laws 1990, ch. 120, § 9; 1991, ch. 160, § 3.

**ANNOTATIONS**

**The 1991 amendment,** effective July 1, 1991, substituted "material" for "materials" in Subsection A; added Subsection E; and made related stylistic changes.

**"Highway".** — Careless driving, as defined in Section 66-8-114 NMSA 1978, cannot be committed in a parking lot, because a parking lot does not fall within the plain meaning or the statutory definition of "highway." *State v. Brennan*, 1998-NMCA-176, 126 N.M. 389, 970 P.2d 161, cert. denied, 126 N.M. 532, 972 P.2d 351.

## 66-1-4.9. Definitions.

As used in the Motor Vehicle Code:

A. "identification card" means a document issued by the department or the motor vehicle administration of a state or other jurisdiction recognized under the laws of New Mexico that identifies the holder and includes a REAL ID-compliant identification card and a standard identification card;

B. "implement of husbandry" means every vehicle that is designed for agricultural purposes and exclusively used by the owner in the conduct of agricultural operations;

C. "international registration plan" means the registration reciprocity agreement among the contiguous states of the United States, the District of Columbia and provinces of Canada providing for payment of apportionable fees on the basis of total distance operated in all jurisdictions. The international registration plan is a method of registering fleets of vehicles that travel in two or more member jurisdictions and complies with the federal Intermodal Surface Transportation Efficiency Act of 1991;

D. "intersection" means:

(1) the area embraced within the prolongation or connection of the lateral curb lines or, if none, then the lateral boundary lines of the roadways of two highways that join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict; and

(2) where a highway includes two roadways thirty feet or more apart, every crossing of each roadway of that divided highway by an intersecting highway shall be regarded as a separate intersection; in the event that the intersecting highway also includes two roadways thirty feet or more apart, every crossing of two roadways of those highways shall be regarded as a separate intersection;

E. "inventory", when referring to a vehicle dealer, means a vehicle held for sale or lease in the ordinary course of business, the cost of which is used in calculating the dealer's cost of goods sold for federal income tax purposes; and

F. "jurisdiction", without modification, means "state".

**History:** 1978 Comp., § 66-1-4.9, enacted by Laws 1990, ch. 120, § 10; 1998, ch. 48, § 1; 2015, ch. 9, § 1; 2019, ch. 167, § 2.

## ANNOTATIONS

**Cross references.** — For the federal Intermodal Surface Transportation and Efficiency Act of 1991, see Title 23 of the U.S.C.

**The 2019 amendment,** effective October 1, 2019, defined "identification card" as used in the Motor Vehicle Code; and added a new Subsection A and redesignated former Subsections A through E as Subsections B through F, respectively.

**The 2015 amendment,** effective July 1, 2015, added "international registration plan" to the definitions section of the Motor Vehicle Code to comply with the federal Intermodal Surface Transportation and Efficiency Act related to interstate registration of vehicles; added Subsection B relating to the definition of "international registration plan", and redesignated the succeeding subsections accordingly.

**The 1998 amendment,** effective July 1, 1998, added a new Subsection C, redesignated former Subsection C as Subsection D, and made minor stylistic changes.

**No "intersection" where nonpublic alley meets highway.** — Where record failed to disclose any evidence that an alley which ran into an east-west street from the south but did not cross to the north side of the street was open to the use of the public as a matter of right, the alley could not be brought within the definition of a highway under Section 64-14-16, 1953 Comp. (similar to Section 66-1-4.8 NMSA 1978), for the purpose of determining whether there existed at that point an intersection as defined under Section

64-14-17, 1953 Comp. (similar to this section). *Sallee v. Spiegel*, 1963-NMSC-088, 72 N.M. 145, 381 P.2d 425.

**Two separate intersections where two lanes separated by 30 feet.** — Where east-west street had two lanes separated by 30-foot wide grass parkway and intersected north-south street, two separate intersections were created, and southbound motorist had no duty to stop at southern roadway where there was no stop sign, even though there was a stop sign at the northern roadway, although he did have duty to operate his automobile in a careful and prudent manner. *Vargas v. Clauser*, 1957-NMSC-035, 62 N.M. 405, 311 P.2d 381.

**If roadway is shown not to be a public road,** then the statutory ban on passing other vehicles within 100 feet of an intersection of two roads does not apply. *Moore v. Armstrong*, 1960-NMSC-098, 67 N.M. 350, 355 P.2d 284.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Parking illegally at or near street corner or intersection as affecting liability for motor vehicle accident, 4 A.L.R.3d 324.

What is street or highway intersection within traffic rules, 7 A.L.R.3d 1204.

## 66-1-4.10. Definitions.

As used in the Motor Vehicle Code:

A. "laned roadway" means a roadway that is divided into two or more clearly marked lanes for vehicular traffic;

B. "law enforcement agency designated by the division" means the law enforcement agency indicated on the dismantler's notification form as the appropriate agency for the receipt of the appropriate copy of that form;

C. "lawful status" means the legal right to be present in the United States, as that phrase is used in the federal REAL ID Act of 2005;

D. "license", without modification, means any license, permit or driving authorization card issued by a state or other jurisdiction recognized under the laws of New Mexico pertaining to the authorizing of persons to operate motor vehicles and includes a REAL ID-compliant driver's license and a standard driver's license;

E. "lien" or "encumbrance" means every chattel mortgage, conditional sales contract, lease, purchase lease, sales lease, contract, security interest under the Uniform Commercial Code [Chapter 55 NMSA 1978] or other instrument in writing having the effect of a mortgage or lien or encumbrance upon, or intended to hold, the title to any vehicle in the former owner, possessor or grantor; and

F. "local authorities" means every county, municipality and any local board or body having authority to enact laws relating to traffic under the constitution and laws of this state.

**History:** 1978 Comp., § 66-1-4.10, enacted by Laws 1990, ch. 120, § 11; 2016, ch. 79, § 2; 2019, ch. 167, § 3.

**ANNOTATIONS**

**The 2019 amendment,** effective October 1, 2019, revised the definition of "license" as used in the Motor Vehicle Code; and in Subsection D, after "authorization card", added "issued by a state or other jurisdiction", and after "operate motor vehicles", added "and includes a REAL ID-compliant driver's license and a standard driver's license".

**The 2016 amendment,** effective May 18, 2016, added the definition of "lawful status" and amended the definition of "license" as used in the Motor Vehicle Code; added a new Subsection C and redesignated the succeeding subsections accordingly; and in Subsection D, after "means any license", deleted "temporary instruction", after "permit or", deleted "temporary license issued or" and added "driving authorization card", and after "pertaining to the", deleted "licensing" and added "authorizing".

**Powers of local authorities.** — A county as a "local authority" as defined in Section 66-1-4.10E NMSA 1978 has the powers granted to local authorities in Sections 66-7-8 and 66-7-9 NMSA 1978, to enact motor vehicle ordinances. *Board of Comm'rs v. Greacen*, 2000-NMSC-016, 129 N.M. 177, 3 P.3d 672.

**Mortgages creating lien must be in writing.** — Chattel mortgages and instruments having the effect of placing a lien on personal property are required to be in writing. *Clovis Fin. Co. v. Sides*, 1963-NMSC-065, 72 N.M. 17, 380 P.2d 173.

## 66-1-4.11. Definitions.

As used in the Motor Vehicle Code:

A. "mail" means any item properly addressed with postage prepaid delivered by the United States postal service or any other public or private enterprise primarily engaged in the transport and delivery of letters, packages and other parcels;

B. "manufactured home" means a movable or portable housing structure that exceeds either a width of eight feet or a length of forty feet, constructed to be towed on its own chassis and designed to be installed with or without a permanent foundation for human occupancy;

C. "manufacturer" means every person engaged in the business of constructing or assembling vehicles of a type required to be registered under the Motor Vehicle Code;

D. "manufacturer's certificate of origin" means a certification, on a form supplied by or approved by the department, signed by the manufacturer that the new vehicle or boat described in the certificate has been transferred to the New Mexico dealer or distributor named in the certificate or to a dealer duly licensed or recognized as such in another state, territory or possession of the United States and that such transfer is the first transfer of the vehicle or boat in ordinary trade and commerce;

E. "moped" means a two-wheeled or three-wheeled vehicle with an automatic transmission and a motor having a piston displacement of less than fifty cubic centimeters, that is capable of propelling the vehicle at a maximum speed of not more than thirty miles an hour on level ground, at sea level;

F. "motorcycle" means every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, including autocycles and excluding a tractor;

G. "motor home" means a camping body built on a self-propelled motor vehicle chassis so designed that seating for driver and passengers is within the body itself;

H. "motor vehicle" means every vehicle that is self-propelled and every vehicle that is propelled by electric power obtained from batteries or from overhead trolley wires, but not operated upon rails, including an electric mobility device, but does not include an electric-assisted bicycle; for the purposes of the Mandatory Financial Responsibility Act [66-5-201 to 66-5-239 NMSA 1978], "motor vehicle" does not include "special mobile equipment"; and

I. "motor vehicle insurance policy" means a policy of vehicle insurance that covers self-propelled vehicles of a kind required to be registered pursuant to New Mexico law for use on the public streets and highways. A "motor vehicle insurance policy":

(1) shall include:

(a) motor vehicle bodily injury and property damage liability coverages in compliance with the Mandatory Financial Responsibility Act; and

(b) uninsured motorist coverage, subject to the provisions of Section 66-5-301 NMSA 1978 permitting the insured to reject such coverage; and

(2) may include:

(a) physical damage coverage;

(b) medical payments coverage; and

(c) other coverages that the insured and the insurer agree to include within the policy.

**History:** 1978 Comp., § 66-1-4.11, enacted by Laws 1990, ch. 120, § 12; 1998, ch. 34, § 3; 2007, ch. 319, § 6; 2015, ch. 53, § 3; 2023, ch. 93, § 3.

## ANNOTATIONS

**The 2023 amendment,** effective July 1, 2023, revised the definition of "motor vehicle"; and in Subsection H, after "rails", added "including an electric mobility device, but does not include an electric-assisted bicycle".

**The 2015 amendment,** effective June 19, 2015, provided for "autocycles" within the definition of motorcycle, as used in the Motor Vehicle Code; and in Subsection F, after "ground,", added "including autocycles and".

**The 2007 amendment,** effective June 15, 2007, required boats to be covered by manufacturer's certificates of origin; eliminated the requirement that manufacturer's certificates of origin contain space for reassignment and a description of the vehicle; and eliminated the definition of "metal tire" and relettered former Subsections F to J as Subsections E to I.

**The 1998 amendment,** effective July 1, 1998, substituted "movable" for "moveable" in Subsection B, substituted "department" for "division" in Subsection D, and rewrote Subsection J.

**Windrower not "vehicle" nor "motor vehicle".** — A windrower, a piece of farm machinery used to mow, crimp and cut hay or other crops into rows to be picked up and compacted into bales, is not a "vehicle" or "motor vehicle" under the statutory definition. *Smith Mach. Corp. v. Hesston, Inc.*, 1985-NMSC-004, 102 N.M. 245, 694 P.2d 501.

**Freight trailer.** — A freight trailer separated from a truck tractor is not an "automobile" under the Motor Vehicle Code. *Newman v. Basis Motor Co.*, 1982-NMCA-074, 98 N.M. 39, 644 P.2d 553.

**"Self-propelled motor vehicle" construed.** — Where a mechanical device is not propelled by its own motor or fuel, but instead receives its power through a trailing cable which conveys electricity to it from an outside source, the device is not "self-propelled." *Kaiser Steel Corp. v. Revenue Div.*, 1981-NMCA-042, 96 N.M. 117, 628 P.2d 687, cert. denied, 96 N.M. 116, 628 P.2d 686.

**Snowmobile.** — The term "motor vehicle" does not include a snowmobile. *State v. Eden*, 1989-NMCA-038, 108 N.M. 737, 779 P.2d 114, cert. denied, 108 N.M. 681, 777 P.2d 1325.

**No distinction between propulsion and nonpropulsion parts.** — The statutory definitions of the terms "vehicle" and "motor vehicle" does not distinguish between the propulsion and nonpropulsion parts thereof. *Halliburton Co. v. Property Appraisal Dep't*, 1975-NMCA-123, 88 N.M. 476, 542 P.2d 56.

**Pickups and trucks** fall within meaning of "motor vehicle" as used in the act's (former Motor Vehicle Code) title, and within the term "automobile" as used in the body of the act. 1967 Op. Att'y Gen. No. 67-134.

**Articulated bus.** — Articulated bus is hybrid vehicle with towing unit falling within the definition of motor vehicle and bus and the towed unit falling within the definition of semi-trailer. 1961 Op. Att'y Gen. No. 61-39.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Validity, construction, and application of exclusion of government vehicles from uninsured motorist provision, 58 A.L.R.5th 511.

## 66-1-4.12. Definitions.

As used in the Motor Vehicle Code:

A. "natural gas vehicle" means a vehicle operated by an engine that primarily uses natural gas;

B. "neighborhood electric car" means a four-wheeled electric motor vehicle that has a maximum speed of more than twenty miles per hour but less than twenty-five miles per hour and complies with the federal requirements specified in 49 CFR 571.500;

C. "nonrepairable vehicle" means a vehicle of a type otherwise subject to registration that:

(1) has no resale value except as a source of parts or scrap metal or that the owner irreversibly designates as a source of parts or scrap metal or for destruction;

(2) has been substantially stripped as a result of theft or is missing all of the bolts on sheet metal body panels, all of the doors and hatches, substantially all of the interior components and substantially all of the grill and light assemblies and has little or no resale value other than its worth as a source of a vehicle identification number that could be used illegally; or

(3) is a substantially burned vehicle that has burned to the extent that there are no more usable or repairable body or interior components, tires and wheels or drive train components or that the owner irreversibly designates for destruction or as having little or no resale value other than its worth as a source of scrap metal or as a source of a vehicle identification number that could be used illegally;

D. "nonrepairable vehicle certificate" means a vehicle ownership document conspicuously labeled "NONREPAIRABLE" issued to the owner of the nonrepairable vehicle;

E. "nonresident" or "non-domiciled" means every person who is not a resident of this state;

F. "nonresident commercial driver's instruction permit" or "non-domiciled commercial driver's instruction permit" means a commercial driver's instruction permit issued by another state to a person domiciled in that state or by a foreign country to a person domiciled in that country;

G. "nonresident commercial driver's license" or "non-domiciled commercial driver's license" means a commercial driver's license issued by another state to a person domiciled in that state or by a foreign country to a person domiciled in that country; and

H. "nonresident's operating privilege" means the privilege conferred upon a nonresident by the laws of this state pertaining to the operation by the nonresident of a motor vehicle, or the use of a motor vehicle owned by the nonresident, in this state.

**History:** 1978 Comp., § 66-1-4.12, enacted by Laws 1990, ch. 120, § 13; 2005, ch. 324, § 3; 2007, ch. 319, § 7; 2016, ch. 70, § 1; 2022, ch. 24, § 1.

**ANNOTATIONS**

**The 2022 amendment,** effective January 1, 2023, defined "non-domiciled", "nonresident commercial driver's instruction permit", "non-domiciled commercial driver's instruction permit" and "non-domiciled commercial driver's license"; in Subsection E, after "'nonresident'", added "or 'non-domiciled'"; added a new Subsection F and redesignated former Subsections F and G as Subsections G and H, respectively; and in Subsection G, after "'nonresident commercial driver's license'", added "or 'non-domiciled commercial driver's license'".

**The 2016 amendment,** effective May 18, 2016, defined "natural gas vehicle" as used in the Motor Vehicle Code; added a new Subsection A and redesignated the succeeding subsections accordingly.

**The 2007 amendment,** effective June 15, 2007, added Subsection A and relettered Subsections A to E as Subsections B to F.

**The 2005 amendment,** effective January 1, 2006, added Subsections A(1) through (3) to define "nonrepairable vehicle" and added Subsection B to define "nonrepairable vehicle certificate".

## 66-1-4.13. Definitions.

As used in the Motor Vehicle Code:

A. "odometer" means a device for recording the total mileage traveled by a vehicle from the vehicle's manufacture and for so long as the vehicle is operable on the highways;

B. "off-highway motor vehicle" means any motor vehicle operated or used exclusively off the highways of this state and that is not legally equipped for operation on the highways of this state, but does not include an electric-assisted bicycle;

C. "official printout" means any record supplied by the division or a similar agency or government entity that indicates the lienholders of record or owners of record of a vehicle or motor vehicle registered within that government's jurisdiction or indicates information about a driver's license or identification card, including traffic violation history or status;

D. "official traffic-control devices" means all signs, signals, markings and devices consistent with the Motor Vehicle Code placed or erected, by authority of a public body or official having jurisdiction, for the purpose of regulating, warning or guiding traffic;

E. "operational design domain" means the specific conditions under which a given automated driving system or feature of the system is designed to function;

F. "operator" means driver, as defined in Section 66-1-4.4 NMSA 1978; and

G. "owner" means a person who holds the legal title of a vehicle and may include a conservator, guardian, personal representative, executor or similar fiduciary, or, in the event that a vehicle is the subject of an agreement for conditional sale or lease with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or, in the event that a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor.

**History:** 1978 Comp., § 66-1-4.13, enacted by Laws 1990, ch. 120, § 14; 2021, ch. 114, § 3; 2023, ch. 93, § 4.

## ANNOTATIONS

**The 2023 amendment,** effective July 1, 2023, revised the definition of "off-highway motor vehicle"; and in Subsection B, after "of this state", added "but does not include an electric-assisted bicycle".

**The 2021 amendment,** effective July 1, 2022, defined "operational design domain" as used in the Motor Vehicle Code; and added a new Subsection E and redesignated former Subsections E and F as Subsections F and G, respectively.

**There is a distinction between "official traffic-control devices"** and "traffic-control signals." *Ward v. Ray*, 1967-NMSC-264, 78 N.M. 566, 434 P.2d 388.

**Both flashing yellow and flashing red signal lights could be** "official traffic-control devices" within the meaning of former Section 64-14-21, 1953 Comp. (similar to this section). *Ward v. Ray, 1967-NMSC-264*, 78 N.M. 566, 434 P.2d 388.

**Holder of legal title to leased vehicle.** — The New Mexico law contemplates that the owner, i.e., the holder of the legal title to a vehicle leased by a New Mexico firm for eight days, is the party responsible for registration. 1969 Op. Att'y Gen. No. 69-95.

## 66-1-4.14. Definitions.

As used in the Motor Vehicle Code:

A. "park" or "parking" means the standing of a vehicle, whether occupied or not, other than temporarily for the purpose of and while actually engaged in loading and unloading;

B. "parking lot" means a parking area provided for the use of patrons of any office of state or local government or of any public accommodation, retail or commercial establishment;

C. "parts car" means a motor vehicle generally in nonoperable condition that is owned by a collector to furnish parts that are usually nonobtainable from normal sources, thus enabling a collector to preserve, restore and maintain a motor vehicle of historic or special interest;

D. "pedestrian" means any natural person on foot;

E. "person" means every natural person, firm, copartnership, association, corporation or other legal entity;

F. "personal information" means information that identifies an individual, including an individual's photograph, social security number, driver identification number, name, address other than zip code, telephone number and medical or disability information, but "personal information" does not include information on vehicles, vehicle ownership, vehicular accidents, driving violations or driver status;

G. "placard" or "parking placard" means a card-like device that identifies the vehicle as being currently in use to transport a person with severe mobility impairment and issued pursuant to Section 66-3-16 NMSA 1978 to be displayed inside a motor vehicle so as to be readily visible to an observer outside the vehicle;

H. "platoon" means a series of motor vehicles that are traveling in a unified manner by means of being connected with wireless communications or other technology allowing for coordinated movement;

I. "pneumatic tire" means every tire in which compressed air is designed to support the load;

J. "pole trailer" means any vehicle without motive power, designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach or pole or by being boomed or otherwise secured to the towing vehicle and ordinarily used for transporting long or irregularly shaped loads such as poles, structures, pipes and structural members capable, generally, of sustaining themselves as beams between the supporting connections;

K. "police or peace officer" means every officer authorized to direct or regulate traffic or to make arrests for violations of the Motor Vehicle Code;

L. "private road or driveway" means every way or place in private ownership used for vehicular travel by the owner and those having express or implied permission from the owner, but not other persons; and

M. "property owner" means the owner of a piece of land or the agent of that property owner.

**History:** 1978 Comp., § 66-1-4.14, enacted by Laws 1990, ch. 120, § 15; 1995, ch. 135, § 1; 1999, ch. 297, § 6; 2021, ch. 114, § 4.

## ANNOTATIONS

**The 2021 amendment,** effective July 1, 2022, added a new Subsection H and redesignated the succeeding subsections accordingly.

**The 1999 amendment,** effective June 18, 1999, substituted "parking area provided for the use" for "parking area containing fifteen or more parking spaces provided for the free use" in Subsection B, added Subsection G, and redesignated former Subsections G to K as Subsections H to L.

**The 1995 amendment,** effective June 16, 1995, added Subsection F and redesignated former Subsections F to J as Subsections G to K.

**Tax identification numbers.** — Although individual tax identification numbers are not specifically listed as information that is included in the definition of "personal information", they are similar to social security numbers and meet the definition of personal information because they provide identifying information. *Republican Party of N.M. v. N.M. Taxation & Revenue Dep't*, 2010-NMCA-080, 148 N.M. 877, 242 P.3d 444, cert. granted, 2010-NMCERT-008, 148 N.M. 942, 242 P.3d 1288.

**If roadway is shown not to be a public road,** then the statutory ban on passing other vehicles within 100 feet of an intersection of two roads does not apply. *Moore v. Armstrong*, 1960-NMSC-098, 67 N.M. 350, 355 P.2d 284.

**"Parking lot".** — Careless driving, as defined in Section 66-8-114 NMSA 1978, cannot be committed in a parking lot, because a "parking lot" does not fall within the plain meaning or the statutory definition of "highway." *State v. Brennan*, 1998-NMCA-176, 126 N.M. 389, 970 P.2d 161, cert. denied, 126 N.M. 532, 972 P.2d 351.

**Exit from a business parking lot is a driveway.** — Where defendant was driving out of a parking lot in a business district; the parking lot had an area for parking vehicles and a path for vehicular travel that allowed patrons ingress and egress to a roadway; a sidewalk spanned the access point that defendant was exiting between the roadway and the private property lines; and defendant stopped on, rather than before, the sidewalk area, defendant violated Section 66-7-346 NMSA 1978 because the location where defendant was exiting the parking lot was a driveway. *State v. Scharff*, 2012-NMCA-087, 284 P.3d 447, cert. denied, 2012-NMCERT-007.

**Unborn fetus.** — A review of the provisions of the Motor Vehicle Code shows that "person" is used in the sense of one who has been born, and never in the sense of an unborn fetus. *State v. Willis*, 1982-NMCA-151, 98 N.M. 771, 652 P.2d 1222 (specially concurring opinion).

## 66-1-4.15. Definitions.

As used in the Motor Vehicle Code:

A. "railroad" means a carrier of persons or property upon cars operated upon stationary rails;

B. "railroad sign or signal" means any sign, signal or device erected by authority of a public body or official or by a railroad and intended to give notice of the presence of railroad tracks or the approach of a railroad train;

C. "railroad train" means a steam engine, electric or other motor, with or without cars coupled thereto, operated upon rails;

D. "REAL ID-compliant driver's license" means a license or a class of license issued by a state or other jurisdiction pertaining to the authorizing of persons to operate motor vehicles and that meets federal requirements to be accepted by federal agencies for official federal purposes;

E. "REAL ID-compliant identification card" means an identification card that meets federal requirements to be accepted by federal agencies for official federal purposes;

F. "reconstructed vehicle" means any vehicle assembled or constructed largely by means of essential parts, new or used, derived from other vehicles or that, if originally otherwise assembled or constructed, has been materially altered by the removal of essential parts, new or used;

G. "recreational travel trailer" means a camping body designed to be drawn by another vehicle;

H. "recreational vehicle" means a vehicle with a camping body that has its own motive power, is affixed to or is drawn by another vehicle and includes motor homes, travel trailers and truck campers;

I. "registration" means registration certificates and registration plates issued under the laws of New Mexico pertaining to the registration of vehicles;

J. "registration number" means the number assigned upon registration by the division to the owner of a vehicle or motor vehicle required to be registered by the Motor Vehicle Code;

K. "registration plate" means the plate, marker, sticker or tag assigned by the division for the identification of the registered vehicle;

L. "residence district" means the territory contiguous to and including a highway not comprising a business district when the property on the highway for a distance of three hundred feet or more is in the main improved with residences or residences and buildings in use for business;

M. "revocation" means that the driver's license and privilege to drive a motor vehicle on the public highways are terminated and shall not be renewed or restored, except that an application for a new license may be presented to and acted upon by the division after the expiration of at least one year after date of revocation;

N. "right of way" means the privilege of the immediate use of the roadway;

O. "road tractor" means every motor vehicle designed and used primarily for drawing other vehicles and constructed not to carry a significant load on the road tractor, either independently or as any part of the weight of a vehicle or load drawn; and

P. "roadway" means that portion of a street or highway improved, designed or ordinarily used for vehicular travel, exclusive of the berm or shoulder; when a highway includes two or more separate roadways, the term "roadway" refers to each roadway separately but not to all of the roadways collectively.

**History:** 1978 Comp., § 66-1-4.15, enacted by Laws 1990, ch. 120, § 16; 2001, ch. 127, § 2; 2007, ch. 319, § 8; 2019, ch. 167, § 4.

**ANNOTATIONS**

**The 2019 amendment,** effective October 1, 2019, defined "REAL ID-compliant driver's license" and "REAL ID-compliant identification card" as used in the Motor Vehicle Code; and added new Subsections D and E.

**The 2007 amendment,** effective June 15, 2007, defined "road tractor" as a motor vehicle primarily used for drawing vehicles.

**The 2001 amendment,** effective June 15, 2001, deleted "that exceeds neither eight feet in width nor forty feet in length, when equipped for the road" following "camping body" in Subsection E; and rewrote Subsection F, which formerly read " 'recreational vehicle' means a vehicle with a camping body that has its own motive power or is drawn by another vehicle".

**Frontage of buildings within 300-foot area is what determines** whether the scene of an accident is within a residential or business district rather than the combined area of the buildings and yards. *Floeck v. Hoover*, 1948-NMSC-021, 52 N.M. 193, 195 P.2d 86.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Meaning of "residence district," "business district," "school area," and the like in statutes and ordinances regulating speed of motor vehicles, 50 A.L.R.2d 343.

## 66-1-4.16. Definitions.

As used in the Motor Vehicle Code:

A. "safety glazing materials" means glazing materials constructed, treated or combined with other materials to reduce substantially, in comparison with ordinary sheet glass or plate glass, the likelihood of injury to persons by objects from exterior sources or by these safety glazing materials when they are cracked and broken;

B. "safety zone" means the area or space that is officially set apart within a highway for the exclusive use of pedestrians and that is protected or is so marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone;

C. "salvage vehicle" means a vehicle:

(1) other than a nonrepairable vehicle, of a type subject to registration that has been wrecked, destroyed or damaged excluding, pursuant to rules issued by the department, hail damage, to the extent that the owner, leasing company, financial institution or the insurance company that insured or is responsible for repair of the vehicle considers it uneconomical to repair the vehicle and that is subsequently not repaired by or for the person who owned the vehicle at the time of the event resulting in damage; or

(2) that was determined to be uneconomical to repair and for which a total loss payment is made by an insurer, whether or not the vehicle is subsequently repaired, if, prior to or upon making payment to the claimant, the insurer obtained the agreement of the claimant to the amount of the total loss settlement and informed the claimant that, pursuant to rules of the department, the title must be branded and submitted to the department for issuance of a salvage certificate of title for the vehicle;

D. "school bus" means a commercial motor vehicle used to transport preprimary, primary or secondary school students from home to school, from school to home or to and from school-sponsored events, but not including a vehicle:

(1) operated by a common carrier, subject to and meeting all requirements of the public regulation commission but not used exclusively for the transportation of students;

(2) operated solely by a government-owned transit authority, if the transit authority meets all safety requirements of the public regulation commission but is not used exclusively for the transportation of students;

(3) operated as a per capita feeder as provided in Section 22-16-6 NMSA 1978; or

(4) that is a minimum six-passenger, full-size, extended-length, sport utility vehicle operated by a school district employee pursuant to Subsection D of Section 22-16-4 NMSA 1978;

E. "seal" means the official seal of the taxation and revenue department as designated by the secretary;

F. "secretary" means the secretary of taxation and revenue, and, except for the purposes of Sections 66-2-3 and 66-2-12 NMSA 1978, also includes the deputy secretary and any division director delegated by the secretary;

G. "semitrailer" means a vehicle without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some significant part of its weight and that of its load rests upon or is carried by another vehicle;

H. "sidewalk" means a portion of street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, intended for the use of pedestrians;

I. "slow-moving vehicle" means a vehicle that is ordinarily moved, operated or driven at a speed less than twenty-five miles per hour;

J. "solid tire" means every tire of rubber or other resilient material that does not depend upon compressed air for the support of the load;

K. "special mobile equipment" means a vehicle not designed or used primarily for the transportation of persons or property and incidentally operated or moved over the highways, including but not limited to farm tractors, road construction or maintenance machinery, ditch-digging apparatus, well-boring apparatus and concrete mixers;

L. "specially constructed vehicle" means a vehicle of a type required to be registered under the Motor Vehicle Code not originally constructed under a distinctive name, make, model or type by a generally recognized manufacturer of vehicles and not materially altered from its original construction;

M. "standard driver's license" means a license or a class of license issued by a state or other jurisdiction recognized by the laws of New Mexico that authorizes the holder to operate motor vehicles and is not guaranteed to be accepted by federal agencies for official federal purposes;

N. "standard identification card" means an identification card that is not guaranteed to be accepted by federal agencies for official federal purposes;

O. "state" means a state, territory or possession of the United States, the District of Columbia or any state of the Republic of Mexico or the Federal District of Mexico or a province of the Dominion of Canada;

P. "state highway" means a public highway that has been designated as a state highway by the legislature, the state transportation commission or the secretary of transportation;

Q. "stop", when required, means complete cessation from movement;

R. "stop, stopping or standing", when prohibited, means any stopping or standing of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic-control sign or signal;

S. "street" or "highway" means a way or place generally open to the use of the public as a matter of right for the purpose of vehicular travel, even though it may be temporarily closed or restricted for the purpose of construction, maintenance, repair or reconstruction;

T. "subsequent offender" means a person who was previously a first offender and who again, under state law, federal law or a municipal ordinance or a tribal law, has been adjudicated guilty of the charge of driving a motor vehicle while under the influence of intoxicating liquor or any drug that rendered the person incapable of safely driving a motor vehicle, regardless of whether the person's sentence was suspended or deferred; and

U. "suspension" means that a person's driver's license and privilege to drive a motor vehicle on the public highways are temporarily withdrawn.

**History:** 1978 Comp., § 66-1-4.16, enacted by Laws 1990, ch. 120, § 17; 1991, ch. 160, § 4; 2003, ch. 142, § 7; 2003, ch. 164, § 2; 2004, ch. 59, § 3; 2005, ch. 324, § 4; 2007, ch. 321, § 2; 2017, ch. 94, § 2; 2019, ch. 167, § 5.

## ANNOTATIONS

**The 2019 amendment,** effective October 1, 2019, defined "standard driver's license" and "standard identification card" as used in the Motor Vehicle Code; and added new Subsections M and N.

**The 2017 amendment,** effective June 16, 2017, excluded from the definition of "school bus" a six-passenger sport utility vehicle operated by a school district employee used for the purposes of transporting certain students to and from school; in Subsection D, Paragraph D(3), after "feeder as", deleted "defined" and added "provided"; and added Paragraph D(4).

**The 2007 amendment,** effective April 2, 2007, defined state to include any state of the Republic of Mexico or the Federal District of Mexico.

**The 2005 amendment,** effective January 1, 2006, added Subsections C(1) and (2) to define "salvage vehicle".

**Salvage vehicle defined.** — A vehicle is a salvage vehicle when an insurer, or other relevant actor determines that it would be economically wasteful to repair a vehicle that has been wrecked, destroyed, or damaged, even if the cost of repairing the vehicle is less than the fair market value of the vehicle. *Pedroza v. Lomas Auto Mall*, 600 F.Supp.2d 1173 (D. N.M. 2009).

**Mole.** — The "mole" which is a piece of equipment weighing 100 tons and which is used to move employees and supplies in and out of a tunnel under construction and to remove excavated material out of the tunnel was not special equipment, nor does it come within the general descriptive terms of the definition of special mobile equipment. *Gibbons & Reed Co. v. Bureau of Revenue*, 1969-NMSC-096, 80 N.M. 462, 457 P.2d 710.

**Preproduction machine not incidentally moved over highways.** — Specialized equipment necessary to perform certain preproduction operations at wells which was bolted to the frame of a vehicle's chassis and permanently mounted for the purpose of carrying that equipment to and from drilling sites over the highways was not incidentally moved over the highways, and was not special mobile equipment. *Halliburton Co. v. Prop. Appraisal Dep't*, 1975-NMCA-123, 88 N.M. 476, 542 P.2d 56.

**Well servicing unit permanently attached to a truck.** — A large well servicing unit was permanently attached to the chassis of the truck. It was made up of an engine to drive the unit and extendable metal arms used to drill into the well hole. Very little room existed on the truck bed for other items which could be hauled. The cab of the truck was large enough to carry three to four people and to haul items of property. No impediments existed which would restrain the truck's use on the public highways. It did not qualify as a special mobile equipment vehicle under the exemption to vehicle registration. 1968 Op. Att'y Gen. No. 68-27.

**Definition of "school bus" may be used in other enactments.** — It would not be unreasonable for the corporation commission (now public regulation commission) to look to the legislature's definition of the term "school bus" in the former Motor Vehicle Act for a guide to interpreting the exemption provided in the Motor Carrier Act (see now Section 65-2-126 NMSA 1978). 1969 Op. Att'y Gen. No. 69-110.

**Well servicing unit.** — While it is true that a "well servicing unit" is not included in the statutory definition of special mobile equipment, it would appear that the unit was designed solely and exclusively for the purpose of transporting the particular machinery for which it is designed and for the accommodation of driver for the same. It is not designed primarily for the transportation of persons or property save as an incident of its use at an appropriate location. A well servicing unit is within the general terms of "special mobile equipment." 1958 Op. Att'y Gen. No. 58-115.

**Cable spool carrier.** — A two wheeled piece of equipment, hitched to a pickup, which tows it, which has no floor, is structured from pipe lengths, is about four feet in height, carries a spool of cable, is never on a public highway except when it is moved from one job to another, the primary purpose being to provide a platform from which the cable is unrolled, is a special mobile equipment vehicle. 1967 Op. Att'y Gen. No. 67-148.

**Motor vehicle hauling exceptional loads over roads.** — A special motor vehicle rented by a New Mexico firm from an Arizona company and used to haul an exceptional load over New Mexico roads was not "special mobile equipment," despite the fact that it was not normally used for transportation of property over highways. 1969 Op. Att'y Gen. No. 69-95.

## *66-1-4.16. Definitions. (Effective July 1, 2024.)*

*As used in the Motor Vehicle Code:*

*A. "safety glazing materials" means glazing materials constructed, treated or combined with other materials to reduce substantially, in comparison with ordinary sheet glass or plate glass, the likelihood of injury to persons by objects from exterior sources or by these safety glazing materials when they are cracked and broken;*

*B. "safety zone" means the area or space that is officially set apart within a highway for the exclusive use of pedestrians and that is protected or is so marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone;*

*C. "salvage vehicle" means a vehicle:*

*(1) other than a nonrepairable vehicle, of a type subject to registration that has been wrecked, destroyed or damaged excluding, pursuant to rules issued by the department, hail damage, to the extent that the owner, leasing company, financial institution or the insurance company that insured or is responsible for repair of the vehicle considers it uneconomical to repair the vehicle and that is subsequently not repaired by or for the person who owned the vehicle at the time of the event resulting in damage; or*

*(2) that was determined to be uneconomical to repair and for which a total loss payment is made by an insurer, whether or not the vehicle is subsequently repaired, if, prior to or upon making payment to the claimant, the insurer obtained the agreement of the claimant to the amount of the total loss settlement and informed the claimant that, pursuant to rules of the department, the title must be branded and submitted to the department for issuance of a salvage certificate of title for the vehicle;*

*D. "school bus" means a commercial motor vehicle used to transport preprimary, primary or secondary school students from home to school, from school to home or to and from school-sponsored events, but not including a vehicle:*

*(1) operated by a common carrier, subject to and meeting all requirements of the department of transportation but not used exclusively for the transportation of students;*

*(2) operated solely by a government-owned transit authority, if the transit authority meets all safety requirements of the department of transportation but is not used exclusively for the transportation of students;*

*(3) operated as a per capita feeder as provided in Section 22-16-6 NMSA 1978; or*

*(4) that is a minimum six-passenger, full-size, extended-length, sport utility vehicle operated by a school district employee pursuant to Subsection D of Section 22-16-4 NMSA 1978;*

*E. "seal" means the official seal of the taxation and revenue department as designated by the secretary;*

*F. "secretary" means the secretary of taxation and revenue, and, except for the purposes of Sections 66-2-3 and 66-2-12 NMSA 1978, also includes the deputy secretary and any division director delegated by the secretary;*

*G. "semitrailer" means a vehicle without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some significant part of its weight and that of its load rests upon or is carried by another vehicle;*

*H. "sidewalk" means a portion of street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, intended for the use of pedestrians;*

*I. "slow-moving vehicle" means a vehicle that is ordinarily moved, operated or driven at a speed less than twenty-five miles per hour;*

*J. "solid tire" means every tire of rubber or other resilient material that does not depend upon compressed air for the support of the load;*

*K. "special mobile equipment" means a vehicle not designed or used primarily for the transportation of persons or property and incidentally operated or moved over the highways, including but not limited to farm tractors, road construction or maintenance machinery, ditch-digging apparatus, well-boring apparatus and concrete mixers;*

*L. "specially constructed vehicle" means a vehicle of a type required to be registered under the Motor Vehicle Code not originally constructed under a distinctive name, make, model or type by a generally recognized manufacturer of vehicles and not materially altered from its original construction;*

*M. "standard driver's license" means a license or a class of license issued by a state or other jurisdiction recognized by the laws of New Mexico that authorizes the holder to operate motor vehicles and is not guaranteed to be accepted by federal agencies for official federal purposes;*

*N. "standard identification card" means an identification card that is not guaranteed to be accepted by federal agencies for official federal purposes;*

*O. "state" means a state, territory or possession of the United States, the District of Columbia or any state of the Republic of Mexico or the Federal District of Mexico or a province of the Dominion of Canada;*

*P. "state highway" means a public highway that has been designated as a state highway by the legislature, the state transportation commission or the secretary of transportation;*

*Q. "stop", when required, means complete cessation from movement;*

*R. "stop, stopping or standing", when prohibited, means any stopping or standing of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic-control sign or signal;*

*S. "street" or "highway" means a way or place generally open to the use of the public as a matter of right for the purpose of vehicular travel, even though it may be temporarily closed or restricted for the purpose of construction, maintenance, repair or reconstruction;*

*T. "subsequent offender" means a person who was previously a first offender and who again, under state law, federal law or a municipal ordinance or a tribal law, has been adjudicated guilty of the charge of driving a motor vehicle while under the influence of intoxicating liquor or any drug that rendered the person incapable of safely driving a motor vehicle, regardless of whether the person's sentence was suspended or deferred; and*

*U. "suspension" means that a person's driver's license and privilege to drive a motor vehicle on the public highways are temporarily withdrawn.*

***History:*** *1978 Comp., § 66-1-4.16, enacted by Laws 1990, ch. 120, § 17; 1991, ch. 160, § 4; 2003, ch. 142, § 7; 2003, ch. 164, § 2; 2004, ch. 59, § 3; 2005, ch. 324, § 4; 2007, ch. 321, § 2; 2017, ch. 94, § 2; 2019, ch. 167, § 5; 2023, ch. 100, § 75.*

***ANNOTATIONS***

***The 2023 amendment,*** *effective July 1, 2024, revised the definition of "school bus"; in Subsection D, Paragraph D(1) and D(2), changed "public regulation commission" to "department of transportation".*

## 66-1-4.17. Definitions.

As used in the Motor Vehicle Code:

A. "tank vehicle" means a motor vehicle that is designed to transport any liquid or gaseous material within a tank that is either permanently or temporarily attached to the vehicle or the chassis and that has either a gross vehicle weight rating of twenty-six thousand one or more pounds or is used in the transportation of hazardous materials requiring placarding of the vehicle under applicable law;

B. "taxicab" means a motor vehicle used for hire in the transportation of persons, having a normal seating capacity of not more than seven persons;

C. "temporary off-site location" means a location other than a dealer's established or additional place of business that is used exclusively for the display of vehicles or vessels for sale or resale and for related business;

D. "through highway" means every highway or portion of a highway at the entrance to which vehicular traffic from intersecting highways is required by law to stop before entering or crossing it when stop signs are erected as provided in the Motor Vehicle Code;

E. "title service company" means a person, other than the department, an agent of the department, a licensed dealer or the motor transportation division of the department of public safety, who for consideration issues temporary registration plates or prepares and submits to the department on behalf of others applications for registration of or title to motor vehicles;

F. "traffic" means pedestrians, ridden or herded animals, vehicles and other conveyances either singly or together using any highway for purposes of travel;

G. "traffic-control signal" means any device, whether manually, electrically or mechanically operated, by which traffic is alternately directed to stop and to proceed;

H. "traffic safety bureau" means the traffic safety bureau of the department of transportation;

I. "trailer" means any vehicle without motive power, designed for carrying persons or property and for being drawn by a motor vehicle, and so constructed that no significant part of its weight rests upon the towing vehicle;

J. "transaction" means all operations necessary at one time with respect to one identification card, one driver, one vessel or one vehicle;

K. "transportation inspector" means an employee of the motor transportation division of the department of public safety who has been certified by the director of the division to enter upon and perform inspections of motor carriers' vehicles in operation;

L. "transporter of manufactured homes" means a commercial motor vehicle operation engaged in the business of transporting manufactured homes from the manufacturer's location to the first dealer's location. A "transporter of manufactured homes" may or may not be associated with or affiliated with a particular manufacturer or dealer;

M. "travel trailer" means a trailer with a camping body and includes recreational travel trailers and camping trailers;

N. "trial court" means the magistrate, municipal or district court that tries the case concerning an alleged violation of a provision of the Motor Vehicle Code;

O. "tribal court" means a court created by a tribe or a court of Indian offense created by the United States secretary of the interior;

P. "tribe" means an Indian nation, tribe or pueblo located wholly or partially in New Mexico;

Q. "truck" means every motor vehicle designed, used or maintained primarily for the transportation of property;

R. "truck camper" means a camping body designed to be loaded onto, or affixed to, the bed or chassis of a truck. A camping body, when combined with a truck or truck cab and chassis, even though not attached permanently, becomes a part of the motor vehicle, and together they are a recreational unit to be known as a "truck camper"; there are three general types of truck campers:

(1) "slide-in camper" means a camping body designed to be loaded onto and unloaded from the bed of a pickup truck;

(2) "chassis-mount camper" means a camping body designed to be affixed to a truck cab and chassis; and

(3) "pickup cover" or "camper shell" means a camping body designed to provide an all-weather protective enclosure over the bed of a pickup truck and to be affixed to the pickup truck; and

S. "truck tractor" means every motor vehicle designed and used primarily for drawing other vehicles and constructed to carry a part of the weight of the vehicle and load drawn.

**History:** 1978 Comp., § 66-1-4.17, enacted by Laws 1990, ch. 120, § 18; 1998, ch. 48, § 2; 1999, ch. 122, § 1; 2001, ch. 127, § 3; 2003, ch. 141, § 1; 2003, ch. 164, § 3; 2007, ch. 319, § 9.

## ANNOTATIONS

**The 2007 amendment,** effective June 15, 2007, added Subsections C and J.

**The 2003 amendments,** effective July 1, 2003, inserted "of the department of public safety" following "motor transportation division" in Subsection D; added Subsections L and M and redesignated former Subsections L to N as Subsections N to P.

This section was also amended by Laws 2003, ch. 141, § 1, effective June 20, 2003. The section is set out as amended by Laws 2003, ch. 164, § 3. *See* 12-1-8 NMSA 1978.

**The 2001 amendment,** effective June 15, 2001, substituted "with a camping body" for "that exceeds neither eight feet in width nor forty feet in length, when equipped for the road" in Subsection J.

**The 1999 amendment,** effective July 1, 1999, inserted present Subsection D and redesignated former Subsection D as Subsection H; inserted Subsection G; and redesignated former Subsections G through L as Subsections I through N.

**The 1998 amendment,** effective July 1, 1998, added present Subsection G and redesignated the remaining Subsections accordingly; and in present Subsection K, inserted "together" and substituted "or" for "of".

**There is a distinction between "traffic control signals"** and "official traffic-control devices." *Ward v. Ray*, 1967-NMSC-264, 78 N.M. 566, 434 P.2d 388.

**Neither flashing yellow nor flashing red signal lights are "traffic-control signals"** within the meaning of Section 64-14-21, 1953 Comp. (similar to this section), because by neither of them is traffic "alternately directed to stop and to proceed." *Ward v. Ray*, 1967-NMSC-264, 78 N.M. 566, 434 P.2d 388.

## 66-1-4.18. Definitions.

As used in the Motor Vehicle Code:

A. "unclaimed vehicle or motor vehicle" means a vehicle or motor vehicle that has been placed in an impound lot by a law enforcement agency or removed to any storage lot by a property owner, and to which no owner or lienholder of record has asserted a valid claim; and

B. "utility trailer" means any trailer, semitrailer or pole trailer, but does not include freight trailers, manufactured homes, trailers of less than one-ton carrying capacity used to transport animals or fertilizer trailers of less than three thousand five hundred pounds empty weight.

**History:** 1978 Comp., § 66-1-4.18, enacted by Laws 1990, ch. 120, § 19.

## 66-1-4.19. Definitions.

As used in the Motor Vehicle Code:

A. "validating sticker" means the tab or sticker issued by the division to signify, upon a registration plate, renewed registration;

B. "vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, including any frame, chassis, body or unitized frame and body of any vehicle or motor vehicle, except devices moved exclusively by human power or used exclusively upon stationary rails or tracks;

C. "vehicle-business number" means the distinctive registration number given by the division to any manufacturer, auto recycler or dealer; and

D. "vehicle plate" means a plate, marker, sticker or tag similar to a registration plate, but that is issued by the department for vehicles that are exempted from registration under the Motor Vehicle Code.

**History:** 1978 Comp., § 66-1-4.19, enacted by Laws 1990, ch. 120, § 20; 2005, ch. 324, § 5; 2017, ch. 70, § 1.

**ANNOTATIONS**

**The 2017 amendment,** effective July 1, 2017, defined "vehicle plate" as used in the Motor Vehicle Code; and added Subsection D.

**The 2005 amendment,** effective January 1, 2006, provided in Subsection B that "vehicle" includes a unitized frame and body and changed "wrecker of vehicles" to "auto recycler" in Subsection C.

**Windrower not "vehicle" nor "motor vehicle".** — A windrower, a piece of farm machinery used to mow, crimp and cut hay or other crops into rows to be picked up and compacted into bales, is not a "vehicle" or "motor vehicle" under the statutory definition. *Smith Mach. Corp. v. Hesston, Inc.*, 1985-NMSC-004, 102 N.M. 245, 694 P.2d 501.

**Mole.** — The "mole" which is a piece of equipment weighing 100 tons and which is used to move employees and supplies in and out of a tunnel under construction and to remove excavated material out of the tunnel is not a vehicle. *Gibbons & Reed Co. v. Bureau of Revenue*, 1969-NMSC-096, 80 N.M. 462, 457 P.2d 710.

**Mobile machine not necessarily "vehicle".** — A finding that a machine "moves" or is "mobile" does not in itself support a conclusion that the machine can be "driven or moved upon a highway" for any purpose. *Kaiser Steel Corp. v. Revenue Div.*, 1981-NMCA-042, 96 N.M. 117, 628 P.2d 687, cert. denied, 96 N.M. 116, 628 P.2d 686.

**In moving itself, a machine is not transporting** property within the meaning of the Motor Vehicle Code. *Kaiser Steel Corp. v. Revenue Div.*, 1981-NMCA-042, 96 N.M. 117, 628 P.2d 687, cert. denied, 96 N.M. 116, 628 P.2d 686.

## 66-1-4.20. Definitions.

As used in the Motor Vehicle Code:

A. "wholesaler" means any person, except a person making a casual sale of the person's own vehicle, who sells or offers for sale vehicles of a type subject to registration in this state, to a vehicle dealer who is licensed under the Motor Vehicle Code or who is franchised by a manufacturer, distributor or vehicle dealer; provided, however, that if any person except a person making a casual sale of the person's own vehicle also sells a vehicle at retail, that person shall be deemed to be a dealer and is subject to the dealer-licensing provisions of the Motor Vehicle Code; and

B. "written clearance from a law enforcement agency" means any written statement signed by a full-time, salaried law enforcement officer stating that a check has been made of the law enforcement agency's records and the computerized records of the national crime information center and that the check of records indicates that the vehicle or motor vehicle in question has not been reported stolen.

**History:** 1978 Comp., § 66-1-4.20, enacted by Laws 1990, ch. 120, § 21; 2005, ch. 324, § 6.

**ANNOTATIONS**

**The 2005 amendment,** effective January 1, 2006, deleted former Subsection B which defined "wrecker of vehicles" to mean a person who acquires vehicles that are required to be registered for the purpose of dismantling the vehicles as scrap material or for resale of parts.

## 66-1-4.21. Additional definitions.

As used in the Motor Vehicle Code:

A. "evidence of registration" means any documentation issued by the department identifying a motor carrier vehicle as being registered with New Mexico or documentation issued by another state pursuant to the terms of a multistate agreement on registration of vehicles to which this state is a party identifying a motor carrier vehicle as being registered with that state; provided that evidence of payment of the weight distance tax and permits obtained under either the Special Fuels Supplier Tax Act [Chapter 7, Article 16A NMSA 1978] or Trip Tax Act [Chapter 7, Article 15 NMSA 1978] are not "evidence of registration";

B. "fleet" means one or more motor carrier vehicles, either commercial or noncommercial but not mixed, that are operated in this and at least one other jurisdiction;

C. "motor carrier" means any person or firm that owns, controls, operates or manages any motor vehicle with gross vehicle weight of twelve thousand pounds or more that is used to transport persons or property on the public highways of this state;

D. "one-way rental fleet" means two or more vehicles each having a gross vehicle weight of under twenty-six thousand one pounds and rented to the public without a driver;

E. "preceding year" means a period of twelve consecutive months fixed by the department, which period is within the sixteen months immediately preceding the commencement of the registration or license year for which proportional registration is sought. The department, in fixing that period, shall make it conform to the terms, conditions and requirements of any applicable agreement or arrangement for the proportional registration of vehicles;

F. "properly registered" means bearing the lawfully issued and currently valid evidence of registration of this or another jurisdiction, regardless of the owner's residence, except in those cases where the evidence has been procured by misrepresentation or fraud; and

G. "public highway" means every way or place generally open to the use of the public as a matter of right for the purpose of vehicular travel, even though it may be temporarily closed or restricted for the purpose of construction, maintenance, repair or reconstruction.

**History:** 1978 Comp., § 66-1-4.21, enacted by Laws 1998 (1st S.S.), ch. 10, § 9.

## 66-1-5. Measurements.

Whenever any provision of the Motor Vehicle Code or regulations promulgated thereunder refers to weight, height, length, width or speed in English units of measurement, it also refers to the metric equivalent of those units or, when adopted, to the metric substitutes for those units adopted by the state highway and transportation department.

**History:** 1978 Comp., § 66-1-5, enacted by Laws 1995, ch. 135, § 2; 1996, ch. 81, § 1.

**ANNOTATIONS**

**The 1996 amendment,** effective May 15, 1996, added "or, when adopted, to the metric substitutes for those units adopted by the state highway and transportation department" at the end of the section.

# ARTICLE 2
# Motor Vehicle Division of Taxation and Revenue Department

## 66-2-1, 66-2-2. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1991, ch. 160, § 22 repealed 66-2-1 and 66-2-2 NMSA 1978, as enacted by Laws 1978, ch. 35, §§ 5 and 6, relating to powers and duties and director of the motor vehicle division, effective July 1, 1991. For provisions of former sections, *see* the 1990 NMSA 1978 on *NMOneSource.com.*

## 66-2-3. Powers and duties of department.

A. The department is vested with the power and is charged with the duty of observing, administering and enforcing the Motor Vehicle Code [66-1-1 NMSA 1978] in cooperation with state and local agencies as provided by law and the provisions of law now existing or hereinafter enacted.

B. The secretary may seek an injunction in any district court to require compliance with or prohibit violation of the Motor Vehicle Code.

C. A person authorized to carry out the duties imposed on the department by law is authorized to copy a record or document, including a birth certificate, necessary to establish that an applicant has met the requirements for issuance of a document issued by the department.

**History:** 1953 Comp., § 64-2-3, enacted by Laws 1978, ch. 35, § 7; 1991, ch. 160, § 5; 1995, ch. 31, § 6; 2007, ch. 319, § 10.

**ANNOTATIONS**

**The 2007 amendment,** effective June 15, 2007, added Subsection C, providing for the copying of records or documents by persons authorized to carry out the duties of the department.

**The 1995 amendment,** effective July 1, 1995, deleted former Subsection B relating to adoption of an official seal by the secretary, and redesignated former Subsection C as Subsection B.

**The 1991 amendment,** effective July 1, 1991, substituted "department" for "director" in the catchline and in Subsection A; deleted former Subsection B, relating to the authority of the director to adopt and enforce rules and regulations; redesignated former Subsections C and D as present Subsections B and C; substituted "secretary" for "director" in Subsections B and C; substituted "department or any of its divisions" for "division" at the end of Subsection B; substituted "under the Motor Vehicle Code" for "herein" at the end of Subsection C; and made stylistic changes in Subsection A.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 18.

## 66-2-3.1. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1995, ch. 31, § 7 repealed 66-2-3.1 NMSA 1978, as enacted by Laws 1991, ch. 160, § 6, relating to issuance of administrative regulations, rulings, instructions and orders by the secretary, effective July 1, 1995. For provisions of former section, *see* the 1994 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* 9-11-6.2 NMSA 1978.

## 66-2-4. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1991, ch. 160, § 22 repealed 66-2-4 NMSA 1978, as enacted by Laws 1978, ch. 35, § 8, relating to office of division, effective July 1, 1991. For provisions of former section, *see* the 1990 NMSA 1978 on *NMOneSource.com.*

## 66-2-5. Director to prescribe forms.

A. The director shall prescribe and provide suitable forms of applications, certificates of title, evidences of registration, driver's licenses and all other forms requisite or deemed necessary to carry out the provisions of the Motor Vehicle Code and any other laws, the enforcement and administration of which are vested in the division.

B. The director shall make available to the public electronic versions of all forms requisite or deemed necessary to carry out the provisions of the Motor Vehicle Code and any other laws, the enforcement and administration of which are vested in the division.

**History:** 1953 Comp., § 64-2-5, enacted by Laws 1978, ch. 35, § 9; 2018, ch. 75, § 2.

**ANNOTATIONS**

**The 2018 amendment,** effective January 1, 2019, required the secretary of taxation and revenue to make available to the public electronic versions of all forms requisite or deemed necessary to carry out the provisions of the Motor Vehicle Code; added new subsection designation "A."; and added Subsection B.

## 66-2-6. Authority to administer oaths.

Officers and employees of the department designated by the secretary or secretary's delegate are, for the purpose of administering the motor vehicle laws, authorized to administer oaths and acknowledge signatures.

**History:** 1953 Comp., § 64-2-6, enacted by Laws 1978, ch. 35, § 10; 1999, ch. 49, § 1.

**ANNOTATIONS**

**The 1999 amendment,** effective July 1, 1999, deleted "and certify copies of records" from the catchline, deleted the Subsection A designation, substituted "department" for "division" and "secretary or secretary's delegate" for "director", and deleted Subsection B, which read, "The director and such officers of the division as he may designate are authorized to prepare under the seal of the division, and deliver upon request, a certified copy of any record of the division, charging a fee for each document so authenticated, and every such certified copy shall be admissible in any proceeding in any court in like manner as the original thereof".

## 66-2-7. Records of the department.

A. All records of the department relating to the administration and enforcement of the Motor Vehicle Code [66-1-1 NMSA 1978] and any other law relating to motor vehicles, the administration and enforcement of which is charged to the department, other than those declared by law to be confidential for the use of the department, shall be open to public inspection during office hours.

B. Disposition of obsolete records of the department relating to the administration and enforcement of the Motor Vehicle Code and any other law relating to motor vehicles, the administration and enforcement of which is charged to the department, shall be made in accordance with the provisions of the Public Records Act [Chapter 14, Article 3 NMSA 1978].

C. The department may copy or abstract records of the department relating to the administration and enforcement of the Motor Vehicle Code and any other law relating to motor vehicles, the administration and enforcement of which is charged to the department, to the extent permitted by law. The copies or abstracts may be made in paper, electronic, microfilm, optical or other formats. Duly certified copies of official records shall be deemed valid and given the same weight and consideration as original records.

D. Any person may purchase copies, printouts or abstracts of records of the department described in Subsection A of this section. The copies, printouts or abstracts may be made in paper, electronic, microfilm, optical or other formats. The department may make a reasonable charge for the furnishing of copies, printouts or abstracts and for certifying any such copy.

**History:** 1953 Comp., § 64-2-7, enacted by Laws 1978, ch. 35, § 11; 1981, ch. 361, § 3; 1985, ch. 26, § 1; 1991, ch. 160, § 7; 1995, ch. 135, § 3; 1999, ch. 49, § 2.

## ANNOTATIONS

**Cross references.** — For records of traffic cases, *see* 66-8-135 NMSA 1978.

For electronic authentication and substitution for signature, *see* 14-3-15.2 NMSA 1978.

**The 1999 amendment,** effective July 1, 1999, in Subsection D added "and for certifying any such copy" to the end of the last sentence, deleted the former last sentence, which read "All fees so collected shall be paid to the state treasurer and distributed in accordance with Section 66-6-23 NMSA 1978", and made minor stylistic changes.

**The 1995 amendment,** effective June 16, 1995, in Subsection C, inserted "to the extent permitted by law" at the end of the first sentence, added the second sentence, and deleted "whether microfilm or computers" following "records" in the third sentence; and added the second sentence in Subsection D.

**The 1991 amendment,** effective July 1, 1991, substituted "department" for "division" in the catchline and throughout the section; inserted "relating to the administration and enforcement of the Motor Vehicle Code and any other law relating to motor vehicles the administration and enforcement of which is charged to the department" in Subsections A, B and C; deleted "division" following "official" in the second sentence in Subsection C; and, in Subsection D, rewrote the first sentence, which read "Any person may purchase copies or abstracts of records of the division that are open to public inspection", and deleted "as determined by the director" following "charged" in the second sentence.

**General public has right to examine files** of the department which are public records. 1968 Op. Att'y Gen. No. 68-90.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Right to inspect motor vehicle records, 84 A.L.R.2d 1261.

## 66-2-7.1. Motor vehicle-related records; confidential.

A. It is unlawful for any department or bureau employee or contractor or for any former department or bureau employee or contractor to disclose to any person other than another employee of the department or bureau any personal information about an individual obtained by the department or bureau in connection with a driver's license or permit, the titling or registration of a vehicle, the administration of the Ignition Interlock Licensing Act [66-5-501 to 66-5-504 NMSA 1978] and the interlock device fund or an identification card issued by the department pursuant to the Motor Vehicle Code except:

(1) to the individual or the individual's authorized representative;

(2) for use by any governmental agency, including any court, in carrying out its functions or by any private person acting on behalf of the government;

(3) for use in connection with matters of motor vehicle and driver safety or theft; motor vehicle emissions; performance monitoring of motor vehicles, motor vehicle parts and dealers; motor vehicle market research activities, including survey research; motor vehicle production alterations, recalls or advisories; and removal of non-owner records from original owner records of motor vehicle manufacturers;

(4) for use in research activities and for use in producing statistical reports, so long as the personal information is not published, redisclosed or used to contact individuals;

(5) for use by any insurer or insurance support organization or by a self-insured entity or its agents, employees or contractors in connection with claims investigation activities, antifraud activities, rating or underwriting;

(6) for providing notice to owners of towed or impounded vehicles;

(7) for use by an employer or its agent or insurer in obtaining or verifying information relating to a holder of a commercial driver's license;

(8) for use by any requester if the requester demonstrates that it has obtained the written consent of the individual to whom the information pertains;

(9) for use by an insured state-chartered or federally chartered credit union; an insured state or national bank; an insured state or federal savings and loan association; or an insured savings bank, but only:

(a) to verify the accuracy of personal information submitted by an individual to the credit union, bank, savings and loan association or savings bank; and

(b) if the information as submitted is not correct or is no longer correct, to obtain the correct information, but only for the purpose of preventing fraud by pursuing legal remedies against or recovering on a debt or security interest from the individual;

(10) for providing organ donor information as provided in the Jonathan Spradling Revised Uniform Anatomical Gift Act [Chapter 24, Article 6B NMSA 1978] or Section 66-5-10 NMSA 1978; or

(11) for providing the names and addresses of all lienholders and owners of record of abandoned vehicles to storage facilities or wrecker yards for the purpose of providing notice as required in Section 66-3-121 NMSA 1978.

B. Any person who violates the provisions of this section is guilty of a misdemeanor and upon conviction shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

**History:** 1978 Comp., § 66-2-7.1, enacted by Laws 1995, ch. 135, § 4; 1998, ch. 13, § 1; 1999, ch. 53, § 1; 2000, ch. 29, § 1; 2007, ch. 323, § 31; 2007, ch. 324, § 1.

## ANNOTATIONS

**2007 Multiple Amendments.** — Laws 2007, ch. 323, § 31 and Laws 2007, ch. 324, § 1 enacted different amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 2007, ch. 324, § 1, as the last act signed by the governor, is set out above and incorporates both amendments. The amendments enacted by Laws 2007, ch. 323, § 31 and Laws 2007, ch. 324, § 1 are described below. To view the session laws in their entirety, *see* the 2007 session laws on *NMOneSource.com*.

Laws 2007, ch. 324, § 1, effective June 15, 2007, provided that it is unlawful to disclose information obtained in connection with the administration of the Ignition Interlock Licensing Act and the interlock device fund.

Laws 2007, ch. 323, § 31, effective July 1, 2007, in Paragraph 10 of Subsection A changed the title of the Uniform Anatomical Gift Act to the Jonathan Spradling Revised Uniform Anatomical Gift Act.

**The 2000 amendment,** effective May 17, 2000, added Subsection A(11) and substituted "sentenced" for "punished" in Subsection B.

**The 1999 amendment,** effective June 18, 1999, in Subsection A deleted former Paragraph (9), relating to the requirement that the motor vehicle department clearly and conspicuously disclose on any forms that personal information collected by the department may be disclosed to any person and the forms must indicate that there is the opportunity to prohibit such disclosure, redesignated former Paragraph (10) as Paragraph (9), and added Paragraph (10).

**The 1998 amendment** added Paragraph A(10) and made minor stylistic changes. Laws 1998, ch. 13 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 20, 1998, 90 days after adjournment of the legislature.

**Driver's license records.** — Where plaintiffs, who wanted to research whether undocumented aliens were voting in elections in New Mexico, requested information about driver's licenses issued to persons who were not citizens or legal residents of the United States, defendants properly redacted individual tax identification numbers and the names, driver's license numbers, and addresses of drivers who obtained their license with proof of identification other than a social security number because the redacted information was personal information which defendants were prohibited from disclosing by 18 U.S.C. § 2721(a)(1) and by Section 66-2-7.1 NMSA 1978. *Republican Party of N.M. v. N.M. Taxation & Revenue Dep't*, 2010-NMCA-080, 148 N.M. 877, 242 P.3d 444, cert. granted, 2010-NMCERT-008, 148 N.M. 942, 242 P.3d 1288.

**Research activities.** — Where plaintiffs requested information about driver's licenses issued to persons who were not citizens or legal residents of the United States for the purpose of challenging voter eligibility; to establish voter fraud, plaintiffs would be required to disclose the personal driver's license information they received from the motor vehicle records to the persons who are permitted by Section 1-4-22 NMSA 1978 to advance a claim challenging voter eligibility and to the district court; and to verify voter eligibility, plaintiffs would have to use the personal driver's license information to contact the individuals from whom the personal driver's license information was obtained, the research exception to confidentiality did not apply. *Republican Party of N.M. v. N.M. Taxation & Revenue Dep't*, 2010-NMCA-080, 148 N.M. 877, 242 P.3d 444, cert. granted, 2010-NMCERT-008, 148 N.M. 942, 242 P.3d 1288.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Validity, construction and application of federal Drivers Privacy Protection Act, 18 U.S.C.A. § 2721 to 2725. 183 A.L.R. Fed. 37.

## 66-2-7.2. Royalties; commercial users of motor vehicle-related databases; distribution to motor vehicle suspense fund.

The department shall remit royalties and other consideration paid by commercial users of databases of motor vehicle-related records of the department pursuant to Subsection C of Section 14-3-15.1 NMSA 1978 to the motor vehicle suspense fund to be distributed in accordance with Section 66-6-23 NMSA 1978 and Subsection F of Section 66-6-13 NMSA 1978. Royalties and other consideration paid to the department pursuant to this section are appropriated to the department for expenditure in fiscal year 2010 and subsequent fiscal years pursuant to this section. Unexpended and unencumbered balances of the amounts received pursuant to Subsection C of Section 14-3-15.1 NMSA 1978 shall not revert to the general fund at the end of any fiscal year.

**History:** Laws 2005, ch. 20, § 2; 2009, ch. 156, § 1.

**ANNOTATIONS**

**Cross references.** — For the motor vehicle suspense fund, *see* 66-6-22.1 NMSA 1978.

**The 2009 amendment,** effective July 1, 2009, after "Section 66-6-23 NMSA 1978", added the remainder to the sentence, and added the second and third sentences.

## 66-2-8. Authority to grant or refuse applications.

The division shall examine and determine the genuineness, regularity and legality of every application for registration of a vehicle, for a certificate of title therefor and for a driver's license, and of any other application lawfully made to the division. The division in all cases may make investigation as may be deemed necessary, may require additional information and shall reject any such application if not satisifed [satisfied] of the genuineness, regularity or legality thereof, or the truth of any statement contained therein, or for any other reason, when authorized by law.

**History:** 1953 Comp., § 64-2-8, enacted by Laws 1978, ch. 35, § 12.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material in this section was inserted by the compiler and it is not part of the law.

## 66-2-9. Seizure of documents and plates.

A. The division may take possession of any documents issued by it, including but not limited to any certificate of title, evidence of registration, permit, license or registration plate, upon expiration, revocation, cancellation or suspension thereof or that is fictitious or that has been unlawfully or erroneously issued.

B. If the division determines that any documents purporting to be of a type described in Subsection A of this section are fictitious, the division shall turn them over to the proper law enforcement agency for use in prosecution.

C. The division may retrieve a registration plate from a motor carrier that is prohibited from operating a motor vehicle by order of a state or federal agency.

**History:** 1953 Comp., § 64-2-9, enacted by Laws 1978, ch. 35, § 13; 1989, ch. 318, § 2; 2004, ch. 59, § 4.

**ANNOTATIONS**

**The 2004 amendment,** effective March 4, 2004, added Subsection C and made other grammar amendments.

**The 1989 amendment,** effective July 1, 1989, designated the formerly undesignated provisions as Subsection A, inserting therein "documents issued by it including but not limited to any" and deleting "issued by it" following "plate", and added Subsection B.

## 66-2-10. Division may summon witnesses and take testimony.

A. The director and officers of the division designated by him shall have authority to summon witnesses to give testimony under oath or to give written deposition upon any matter under the jurisdiction of the division. Such summons may require the production of relevant books, papers or records.

B. Every such summons shall be served at least five days before the return date, either by personal service made by any person over eighteen years of age or by registered mail, but return acknowledgement is required to prove such letter service. Failure to obey such a summons so served shall constitute a misdemeanor. The fees for the attendance and travel of witnesses shall be the same as for witnesses before the district court.

C. The district court shall have jurisdiction, upon application by the director, to enforce all lawful orders of the director under this section.

**History:** 1953 Comp., § 64-2-10, enacted by Laws 1978, ch. 35, § 14.

**ANNOTATIONS**

**Cross references.** — For penalty for a misdemeanor violation of the Motor Vehicle Code, *see* 66-8-7 NMSA 1978.

For the sentencing authority with respect to misdemeanors generally, *see* 31-19-1 NMSA 1978.

## 66-2-11. Giving of notice.

Whenever the department or the administrative hearings office is authorized or required to give any notice under the Motor Vehicle Code or any other law regulating

the operation of vehicles, unless a different method of giving notice is otherwise expressly prescribed, notice shall be given either by personal delivery to the person to be notified or by deposit in the United States mail of the notice in an envelope with postage prepaid, addressed to the person at the person's address as shown by the records of the department. The giving of notice by mail is complete upon the expiration of seven days after deposit of the notice. Proof of the giving of notice in either manner may be made by the certificate of any officer or employee of the department or affidavit of any person over eighteen years of age, naming the person to whom the notice was given and specifying the time, place and manner of the giving of the notice. Notice is given when a person refuses to accept notice.

**History:** 1953 Comp., § 64-2-11, enacted by Laws 1978, ch. 35, § 15; 1995, ch. 135, § 5; 2015, ch. 73, § 27.

**ANNOTATIONS**

**The 2015 amendment,** effective July 1, 2015, provided the procedures for giving notice when the administrative hearings office is required to give notice under the Motor Vehicle Code; and after "department", added "or the administrative hearings office", and after "addressed to the person at", deleted "his" and added "the person's".

**The 1995 amendment,** effective June 16, 1995, added the last sentence, substituted "department" for "division", and made numerous stylistic changes throughout the section.

**This section specifies the minimal due process notice** which is required before the state may revoke a driver's license in an administrative proceeding. *State v. Herrera*, 1991-NMCA-005, 111 N.M. 560, 807 P.2d 744, cert. denied, 111 N.M. 529, 807 P.2d 227.

**Evidentiary effect of proof of mailing.** — This section should not be read as creating a presumption of notice to a licensee merely upon proof of mailing, without more. *City of Albuquerque v. Juarez*, 1979-NMCA-084, 93 N.M. 188, 598 P.2d 650, *overruled on other grounds by State v. Herrera*, 1991-NMCA-005, 111 N.M. 560, 807 P.2d 744, cert. denied, 111 N.M. 529, 807 P.2d 227.

**Sufficiency of evidence of notice.** — Record supported a finding that defendant was aware that he was driving with a revoked license, where two separate notices of revocation were sent by certified mail to his home address after defendant received separate convictions of driving while under the influence of alcohol, and both notices were unreturned. *State v. Herrera*, 1991-NMCA-005, 111 N.M. 560, 807 P.2d 744, cert. denied, 111 N.M. 529, 807 P.2d 227.

## 66-2-12. Police authority of division.

A. The director and such officers, deputies and inspectors of the division as he shall designate by the issuance of credentials shall have the powers:

(1) of peace officers for the purpose of enforcing the provisions of the Motor Vehicle Code [66-1-1 NMSA 1978];

(2) to make arrests upon view and without warrant for any violation committed in their presence of any of the provisions of the Motor Vehicle Code;

(3) when on duty, upon reasonable belief that any vehicle is being operated in violation of any provision of the Motor Vehicle Code, to require the driver thereof to stop and exhibit his driver's license and the registration evidence issued for the vehicle and submit to an inspection of such vehicle, the registration plate and registration evidence thereon or to an inspection and test of the equipment of such vehicle;

(4) [to] inspect any vehicle of a type required to be registered hereunder in any public garage or repair shop or in any place where such vehicles are held for sale or wrecking, for the purpose of locating stolen vehicles and investigating the title and registration thereof; and

(5) to determine by inspection that all dealers and wreckers of vehicles are in compliance with the provisions of the Motor Vehicle Code with particular reference to but not limited to the requirements for an established place of business and for records.

B. The director may issue credentials to officers of state and local law enforcement agencies as evidence of the division's intent to fully implement the enforcement of the provisions of the Motor Vehicle Code.

**History:** 1953 Comp., § 64-2-12, enacted by Laws 1978, ch. 35, § 16.

## ANNOTATIONS

**Cross references.** — For peace officers, *see* 29-1-1 NMSA 1978 et seq.

For the definition of "peace officer", *see* 30-1-12 NMSA 1978.

**Bracketed material.** — The bracketed material in Subsection A(4) was inserted by the compiler and it is not part of the law.

**Constitutionality.** — Under Sections 66-2-12A(3), 66-3-13, and 66-5-16 NMSA 1978, a law enforcement officer is permitted to ask for a driver's license, registration, and proof of insurance once an officer stops an automobile for safety reasons. Those statutes are consistent with the constitutional protections against unreasonable searches and seizures afforded by the Fourth Amendment of the U.S. Constitution and N.M. Const., art. II, § 10. *State v. Reynolds*, 1995-NMSC-008, 119 N.M. 383, 890 P.2d 1315.

**Administrative warrant required.** — Paragraphs (4) and (5) of Subsection A of this section require the issuance of an administrative warrant, absent consent or an emergency situation, and what constitutes an emergency situation must be decided case by case. *State v. Galio* , 1978-NMCA-068, 92 N.M. 266, 587 P.2d 44, cert. quashed, 92 N.M. 260, 586 P.2d 1089 (decided under former law).

**Designation of motor transportation division inspectors to enforce code.** — By agreement, the motor vehicle division can designate motor transportation division inspectors, whose primary duties are to enforce the Motor Carrier Act (Sections 65-2-80 to 65-2-127 NMSA 1978) and other laws regulating commercial vehicles, to enforce the Motor Vehicle Code against noncommercial vehicles. 1992 Op. Att'y Gen. No. 92-02.

**Credentials for municipal police officers.** — Absent a statutory exception, such as fresh pursuit or the issuance of credentials by the Motor Vehicle Division, a municipal police officer's authority to enforce the Motor Vehicle Code is limited to the city limits of the municipality where he is employed. 1988 Op. Att'y Gen. No. 88-77.

**Law reviews.** — For comment, "State v. Galio: An Administrative Search?" see 9 N.M.L. Rev. 419 (1979).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Validity of routine roadblocks by state or local police for purpose of discovery of vehicular or driving violations, 37 A.L.R.4th 10.

Search and seizure: lawfulness of demand for driver's license, vehicle registration, or proof of insurance pursuant to police stop to assist motorist, 19 A.L.R.5th 884.

Validity of police roadblocks or checkpoints for purpose of discovery of alcoholic intoxication - post-Sitz cases, 74 A.L.R.5th 319.

Validity of police roadblocks or checkpoints for purpose of discovery of illegal narcotics violations, 82 A.L.R.5th 103.

## 66-2-13. Legal services rendered director.

It is the duty of the attorney general to render to the director such legal services as he requires in the discharge of his duties under the Motor Vehicle Code [66-1-1 NMSA 1978].

**History:** 1953 Comp., § 64-2-13, enacted by Laws 1978, ch. 35, § 17.

## 66-2-14. Appointment of agents; termination.

A. Whenever the secretary deems it necessary for the purpose of effecting economy in carrying out the functions of the department and for the purpose of providing necessary service to the people of this state, the secretary may appoint agents to receive applications for registration, to collect fees and revenues, to issue all

licenses or permits and to act for the department in carrying out the duties imposed by law.

B. The department may specify the functions or services to be performed by agents pursuant to Subsection A of this section and may limit the amount to be paid to such agent by contract. The department may terminate the designation of any agent for failure of the agent to perform to the secretary's satisfaction the agent's duties by notifying the agent of the termination. Agency agreements may provide for the form of notice and the length of the period, if any, between the notice and the effective date of the termination.

**History:** 1953 Comp., § 64-2-14, enacted by Laws 1978, ch. 35, § 18; 1987, ch. 185, § 1; 1989, ch. 318, § 3; 1995, ch. 135, § 6.

## ANNOTATIONS

**The 1995 amendment,** effective June 16, 1995, deleted "or assignment of division employees by director" following "agents" in the section heading; rewrote Subsection A; and in Subsection B, substituted "department" for "director" and added the last two sentences.

**The 1989 amendment,** effective July 1, 1989, designated the formerly undesignated provisions as Subsection A, making minor stylistic changes therein, and added Subsection B.

**Denial of access to computer data under contract held appropriate.** — Where plaintiff entered into two written contracts, the "agent contract" and the "inspector contract" with the director of the New Mexico motor vehicle division of the taxation and revenue department, whereby they were authorized to perform specified services relative to motor vehicle registration, licensing, and inspection, and a third contract, "the "data access agreement", granted plaintiffs access to computerized motor vehicle records to carry out their duties under the other two contracts, the purpose of the data access agreement was to implement the other two contracts. Therefore, when the agent contract and the inspector contract were properly canceled, it was appropriate to deny plaintiffs access to the computer data. *Boydston v. N.M. Taxation & Revenue Dep't*, 125 F.3d 861 (10th Cir. 1997)(unpublished).

**Authority to appoint agents.** — Commissioner (now secretary) has authority to appoint agents or employees to collect fees and revenues and to issue licenses or permits in areas where no regular state offices are maintained. 1964 Op. Att'y Gen. No. 64-154 (rendered under prior law).

**Salaried employees may perform agent's services.** — It becomes clear from the authorizing legislation for the appointment of agents that it is contemplated that such appointment should occur only upon determination by commissioner (now secretary) that economies can be effected and services may be improved by such appointments. It

is inherent in this provision that the office may provide these services through salaried employees if it is believed to be more efficient and economical to do so. 1960 Op. Att'y Gen. No. 60-189.

**Director could limit use of records by agent.** — The general authority of the motor vehicle commissioner (now secretary) to appoint agents also carries with it implied authority to regulate the manner of their operation and conduct of the business they carry on. Should the commissioner wish to limit use of the records of the department by the agents it is within his power to do so. 1959 Op. Att'y Gen. No. 59-33.

## 66-2-14.1. Fee agent designation; termination.

A. Any class A county or municipality within a class A county that has adopted an ordinance for a vehicle emission inspection and maintenance program pursuant to Subsection C of Section 74-2-4 NMSA 1978 may be designated by the department as an agent for the registration and re-registration of motor vehicles whose registered owner's address, as shown in the records of the department, is within the class A county or municipality within the class A county.

B. A military installation in New Mexico that has entered into an agency agreement with the department to operate a motor vehicle field office may be designated by the department as a fee agent for purposes of this section.

C. When designated as an agent or fee agent pursuant to this section, the county, municipality or military installation shall provide for effective enforcement to ensure compliance with the state motor vehicle registration laws and the vehicle emission inspection and maintenance program. Enforcement shall include but not be limited to denial of motor vehicle registration to any vehicle that fails to pass the vehicle emission inspection.

D. When designated as an agent or fee agent pursuant to this section, the county, municipality or military installation shall reimburse the department for any additional costs incurred by the department as a result of the designation of the county, municipality or military installation as an agent or fee agent. Money reimbursed to the department is appropriated to the department for administration and enforcement of the Motor Vehicle Code.

E. The department may terminate the designation of an agent or fee agent for failure of the agent to perform to the secretary's satisfaction the agent's duties by notifying the agent of the termination. Agency agreements may provide for the form of notice and the length of the period, if any, between the notice and the effective date of the termination.

**History:** 1978 Comp., § 66-2-14.1, enacted by Laws 1985, ch. 95, § 2; 1987, ch. 268, § 20; 1995, ch. 135, § 7; 2012, ch. 47, § 1.

## ANNOTATIONS

**The 2012 amendment,** effective July 1, 2012, permitted the department to designate military installations as fee agents; added Subsection B; in Subsection C, in the first sentence, after "designated as an agent", added "or fee agent", after "the county, municipality", added "or military installation"; in Subsection D, in the first sentence, after "designated as an agent", added "or fee agent", after "this section, the county, municipality", added "or military installation", after "designation of the county", deleted "or", after "designation of the county, municipality", added "or military installation", and after "military installation as an agent", added "or fee agent"; and in Subsection E, in the first sentence, after "designation of an agent", added "or fee agent".

**The 1995 amendment,** effective June 16, 1995, added "termination" in the section heading, substituted "department" for "division" in Subsection A, made a minor stylistic change in Subsection C, and added Subsection D.

# 66-2-15. Agents or department employees to remit money received; bonds for agents or department employees.

Agents or department employees shall remit all money received by them in the carrying out of the duty imposed upon them by the Motor Vehicle Code [66-1-1 NMSA 1978], including administrative fees. The agents' reports are subject to audit and acceptance by the department. Before undertaking a duty on behalf of the director, the agents shall execute a surety bond, in an amount required by the director and in the form required of public officials by law. The department shall designate those employees required to be covered by a bond.

**History:** 1953 Comp., § 64-2-15, enacted by Laws 1978, ch. 35, § 19; 1990, ch. 120, § 22; 2007, ch. 319, § 11.

## ANNOTATIONS

**Compiler's notes.** — Section 10-2-15 NMSA 1978 prohibits state agencies from purchasing any employee surety bond except pursuant to the Surety Bond Act, 10-2-13 NMSA 1978.

**The 2007 amendment,** effective June 15, 2007, changed "agents' administrative fees" to "administrative fees".

**The 1990 amendment,** effective July 1, 1990, substituted "department employees" for "assigned division employees" in two places in the catchline and in one place in the first sentence, deleted "designated by the director to act for him" following "employees" and substituted "the Motor Vehicle Code" for "their appointment or assignment to the director" in the first sentence, deleted the former second sentence which read "Notwithstanding the provisions of Section 64-6-23 NMSA 1953, the agents' administrative service fees, after audit and acceptance of the agents' reports by the

director, shall be remitted to the agents", added the present second sentence, substituted "requires" for "shall require" in the third sentence, and, in the last sentence, substituted "department" for "director" in two places and "such employees" for "all assigned employees".

**All fees must be remitted to director.** — Plan to have agent receive fees while working in a regular office violated Section 64-2-18, 1953 Comp. (similar to this Section 66-2-14 NMSA 1978), and also Section 64-2-19, 1953 Comp. (similar to this section), where the money was remitted to the division and not to the commissioner (now secretary). 1967 Op. Att'y Gen. No. 67-98.

**Existing bonds met former provision's requirements.** — Presently existing bonds of city officials of a city designated distributor of license plates are sufficient to meet the requirements of Laws 1959, ch. 6, § 2 (Section 64-2-19, 1953 Comp., similar to this section), if these bonds are approved by the commissioner (now secretary) as to amount and are amended to provide for these officials' added responsibility. 1959 Op. Att'y Gen. No. 59-84.

## 66-2-16. Administrative fees; collection; remittance; payment; optional fees; appropriation.

A. The department and its agents shall collect an administrative fee to defray the department's costs of operation and of rendering service to the public. The fee shall be two dollars ($2.00) for each transaction performed by an agent or the department and shall be collected in addition to all other fees and taxes imposed.

B. All sums collected by an agent or the department as administrative fees shall be remitted as provided in Section 66-2-15 NMSA 1978.

C. Administrative fees remitted by department employees shall be deposited by the state treasurer into the motor vehicle suspense fund and distributed in accordance with Section 66-6-23 NMSA 1978.

D. Notwithstanding the provisions of Subsections A through C of this section, a class A county with a population exceeding three hundred thousand or municipality with a population exceeding three hundred thousand within a class A county designated as an agent pursuant to Section 66-2-14.1 NMSA 1978 shall not be paid the fee provided in Subparagraph (b) of Paragraph (1) of Subsection A of Section 66-6-23 NMSA 1978.

E. The secretary is authorized to establish by rule fees to cover the expense of providing additional services for the convenience of the motoring public. Any service established for which a fee is adopted pursuant to this subsection shall be optional, with the fee not being charged to any person not taking advantage of the service. Amounts collected pursuant to this subsection are appropriated to the department for the purpose of defraying the expense of providing the service and for the purposes set forth in Subsection F of Section 66-6-13 NMSA 1978. At the end of a fiscal year the

unexpended and unencumbered balances of the fees collected pursuant to this subsection shall not revert to the general fund but shall be expended by the department in fiscal year 2010 and subsequent fiscal years.

F. The secretary shall review, at the end of each fiscal year, the aggregate total of motor vehicle transactions performed by each municipality, county or fee agent operating a motor vehicle field office, and identify each office exceeding ten thousand aggregate transactions per year.

**History:** 1953 Comp., § 64-2-16, enacted by Laws 1978, ch. 35, § 20; 1981, ch. 378, § 1; 1985, ch. 95, § 3; 1987, ch. 128, § 2; 1990, ch. 120, § 23; 1993, ch. 361, § 1; 1999, ch. 49, § 3; 2005, ch. 20, § 1; 2007, ch. 319, § 12; 2009, ch. 156, § 2.

## ANNOTATIONS

**Cross references.** — For provisions regarding payment in foreign currency under the Motor Vehicle Code, *see* 66-6-36 NMSA 1978.

**The 2009 amendment,** effective July 1, 2009, in Subsection E, in the last sentence, after "expense of providing the service", added the remainder of the sentence.

**The 2007 amendment,** effective June 15, 2007, provided that an A county with a population exceeding three hundred thousand or a municipality with a population exceeding three hundred thousand in a class A county shall not be paid the fee provided in Subparagraph (b) of Paragraph (1) of Subsection A of Section 66-6-23 NMSA 1978.

**The 2005 amendment,** effective July 1, 2005, increased the amount of the administrative service fee per transaction from $.50 to $2.00.

**The 1999 amendment,** effective July 1, 1999, substituted "secretary" for "director" in the second sentence of Subsection A, and added Subsection F.

**The 1993 amendment,** effective June 18, 1993, substituted "with a population exceeding three hundred thousand or municipality with a population exceeding three hundred thousand" for "or municipality" in Subsection D.

**The 1990 amendment,** effective July 1, 1990, substituted "secretary" for "director" and "department" for "assigned division employees" (or similar terms) throughout the section, deleted former Subsections D and E relating to the remittance of administrative service fees in certain circumstances, and redesignated former Subsections F and G as present Subsections D and E.

**Provision sole authority for collecting fee and exclusive for agents.** — Section 64-2-20, 1953 Comp. (similar to this section) authorized the commissioner (now secretary) to establish a schedule of administrative service fees which may be collected by

"agents" to defray the costs of operation of the "agents' offices and of rendering service to the public." This was the sole authority for the collection of this administrative service fee and was exclusive for those offices operated by appointed agents. 1960 Op. Att'y Gen. No. 60-189 (rendered under prior law).

**Authority of secretary to collect fees.** — Legislature expressly authorized commissioner (now secretary) to collect administrative fees, in addition to all other fees and taxes imposed. 1964 Op. Att'y Gen. No. 64-154 (rendered under prior law).

**Cannot charge fee for use of premises to examine records.** — The department (now division) may not charge private persons a rental fee for the use of department premises to examine and abstract public records. 1968 Op. Att'y Gen. No. 68-90 (opinion rendered prior to addition of Subsection D).

**Cannot charge for use of files.** — The department (now division) of motor vehicles may not impose a charge against private persons for use of files which are public records. 1968 Op. Att'y Gen. No. 68-90 (opinion rendered prior to addition of Subsection D).

## 66-2-16.1. Veterans' enterprise fund option.

The vehicle registration form in use as of January 1, 2013 shall include a check-off option for a driver who wishes to contribute to the veterans' enterprise fund for a one-dollar ($1.00) or a five-dollar ($5.00) fee in addition to the registration fees required by the division. All fees collected from the check-off option shall be paid to the state treasurer to the credit of the veterans' enterprise fund within two months of receipt.

**History:** Laws 2012, ch. 8, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2012, ch. 8, § 2 made Laws 2012, ch. 8, § 1 effective January 1, 2013.

## 66-2-17. Administrative hearing; procedure.

A. Unless a more specific provision for review exists, any person may dispute the denial of, or failure to either allow or deny, any license, permit, placard or registration provided for under the Motor Vehicle Code by filing with the secretary a written protest against the action or inaction by the department. Every protest shall identify the person and the action or inaction that is in dispute, the grounds for the protest and the affirmative relief requested. The statement of grounds for protest shall specify individual grounds upon which the protest is based and a summary statement of the evidence expected to be produced supporting each ground asserted, if any; provided that the person may supplement the statement at any time prior to a hearing conducted on the protest pursuant to the provisions of the Administrative Hearings Office Act [Chapter 7,

Article 1B NMSA 1978]. The secretary may, in appropriate cases, provide for an informal conference before the administrative hearings office sets a hearing of the protest.

B. Any protest by a person shall be filed within thirty days of the date of the mailing or verbal notification of the action proposed to be taken by the department. If a protest is not filed within the time required for filing a protest, the secretary may proceed with the action proposed by the department.

**History:** Laws 1995, ch. 129, § 3; 2015, ch. 73, § 28.

**ANNOTATIONS**

**Cross references.** — For Rules of Civil Procedure for the District Courts, *see* Rule 1-001 NMRA.

For procedures governing administrative appeals to the district court, *see* Rule 1-074 NMRA.

For scope of review of the district court, *see* Zamora v. Village of Ruidoso Downs, 120 N.M. 778, 907 P.2d 182 (1995).

**The 2015 amendment,** effective July 1, 2015, provided that administrative hearings shall be conducted pursuant to the Administrative Hearings Office Act; in the catchline, after "procedure", deleted "appeals from secretary's decision and order; exhaustion of administrative remedies"; in Subsection A, after "action or inaction", deleted "taken", after "any time prior to", deleted "any" and added "a", after "conducted on the protest", deleted "under Subsection D of this section" and added "pursuant to the provisions of the Administrative Hearings Office Act", and after "conference before", deleted "setting" and added "the administrative hearings office sets"; in Subsection B, after "proceed with the action", deleted "or inaction"; and deleted Subsections C through J.

**Jurisdiction of proceeding for restoration of driving privileges.** — Because plaintiffs had never applied for, much less been denied, a driver's license after expiration of the one-year revocation period, they failed to take the mandated administrative steps necessary to vest jurisdiction in the district court of their action seeking restoration of their driving privileges. *Alvarez v. State Taxation and Revenue Dep't*, 1999-NMCA-006, 126 N.M. 490, 971 P.2d 1280.

## *66-2-18. Nontraditional communication or disability registry; inclusion in vehicle record system and national crime information center system. (Effective July 1, 2024.)*

*A. The department shall create and maintain a statewide registry referred to as the "nontraditional communication or disability registry" to identify motor vehicles that may be driven or occupied by a person who has a medical diagnosis by a licensed health*

*practitioner of a condition or disability that may cause the person to fail to be able to communicate with a peace officer or to respond appropriately to a peace officer's commands, including an autism spectrum disorder, deafness, a brain injury, an intellectual disability, a behavioral health disorder, dementia or a seizure disorder. The registry shall cite all of the conditions and disabilities associated with the drivers and occupants of a particular motor vehicle. The department shall provide online internet access to the registry to peace officers. The registry shall not be made available to the public and is exempt from disclosure pursuant to the Inspection of Public Records Act [Chapter 14, Article 3 NMSA 1978].*

*B. The department shall include in its electronic motor vehicle record management system a data field indicating that a motor vehicle is in the nontraditional communication or disability registry and a link to the registry. The department shall share this data with the department of public safety, which shall include it in the national crime information center system for peace officers to view when enforcing the law.*

***History:*** *Laws 2023, ch. 136, § 1.*

***ANNOTATIONS***

***Effective dates.*** *— Laws 2023, ch. 136, § 4 made Laws 2023, ch. 136, § 1 effective July 1, 2024.*

# ARTICLE 3
# Registration Laws; Security Interests; Anti-Theft Provisions; Bicycles; Equipment; Unsafe Vehicles; Off-Highway Motor Vehicles; Other Vehicles

# PART 1
# REGISTRATION, CERTIFICATES OF TITLE AND REGISTRATION PLATES GENERALLY

## 66-3-1. Vehicles subject to registration; exceptions.

A. With the exception of vehicles identified in Subsection B of this section, every motor vehicle, manufactured home, trailer, semitrailer and pole trailer when driven or moved upon a highway and every off-highway motor vehicle is subject to the registration and certificate of title provisions of the Motor Vehicle Code except:

(1) any such vehicle driven or moved upon a highway in conformance with the provisions of the Motor Vehicle Code relating to manufacturers, dealers, lien-holders or nonresidents;

(2) any such vehicle that is driven or moved upon a highway only for the purpose of crossing the highway from one property to another;

(3) an implement of husbandry that is only incidentally operated or moved upon a highway;

(4) special mobile equipment;

(5) a vehicle that is propelled exclusively by electric power obtained from overhead trolley wires though not operated upon rails;

(6) a freight trailer if it is:

(a) properly registered in another state;

(b) identified by a proper base registration plate that is properly displayed; and

(c) identified by other registration documents that are in the possession of the operator and exhibited at the request of a police officer;

(7) a freight trailer or utility trailer owned and used by:

(a) a nonresident solely for the transportation of farm products purchased by the nonresident from growers or producers of the farm products and transported in the trailer out of the state;

(b) a farmer or a rancher who transports to market only the produce, animals or fowl produced by that farmer or rancher or who transports back to the farm or ranch supplies for use thereon; or

(c) a person who transports animals to and from fairs, rodeos or other places, except racetracks, where the animals are exhibited or otherwise take part in performances, in trailers drawn by a motor vehicle or truck of less than ten thousand pounds gross vehicle weight rating bearing a proper registration plate, but in no case shall the owner of an unregistered trailer described in this paragraph perform such uses for hire;

(8) a moped;

(9) an electric personal assistive mobility device;

(10) a vehicle moved on a highway by a towing service as defined in Section 59A-50-2 NMSA 1978;

(11) an off-highway motor vehicle exempted pursuant to Section 66-3-1005 NMSA 1978; and

(12) an electric-assisted bicycle.

B. A certificate of title required pursuant to Subsection A of this section is not required for a vehicle of a type subject to registration owned by:

(1) the government of the United States; or

(2) a carrier that is from a jurisdiction that is not a participant in the International Fuel Tax Agreement, that is authorized by the United States government or an agency of the United States government to conduct cross-border operations beyond the commercial border zone pursuant to the provisions of the United States-Mexico-Canada Agreement and that identifies New Mexico as the carrier's base jurisdiction.

C. A person who violates the provisions of this section is guilty of a penalty assessment misdemeanor. A person charged with violating this section shall not be convicted if the person produces, in court, evidence of compliance valid at the time of issuance of the citation.

**History:** 1953 Comp., § 64-3-1, enacted by Laws 1978, ch. 35, § 21; 1999, ch. 227, § 1; 2001, ch. 158, § 1; 2007, ch. 319, § 13; 2007, ch. 320, § 1; 2013, ch. 204, § 1; 2018, ch. 74, § 6; 2023, ch. 93, § 5.

## ANNOTATIONS

**Cross references.** — For general definitions applicable to this section, *see* 66-1-4 to 66-1-4.20 NMSA 1978.

For definition of "special mobile equipment", *see* 66-1-4.16 NMSA 1978.

For fraudulent applications, *see* 66-8-1 NMSA 1978.

For false or improper use of evidences of registration, *see* 66-8-2, 66-8-3 NMSA 1978.

For revocation or suspension of registration, *see* 66-8-4 to 66-8-6 NMSA 1978.

**The 2023 amendment,** effective July 1, 2023, provided that electric-assisted bicycles are exempt from registration requirements; and in Subsection A, added Paragraph A(12).

**The 2018 amendment,** effective July 1, 2018, reduced the penalty to a penalty assessment misdemeanor any violation of the provisions of this section; and in

Subsection C, after "guilty of a", added "penalty assessment", and after "misdemeanor", deleted "as provided in Section 66-8-7 NMSA 1978".

**The 2013 amendment,** effective July 1, 2013, provided that a person cited for no registration shall not be convicted if the person produces evidence of compliance in court; and added Subsection C.

**The 2007 amendment,** effective April 2, 2007, provided that a certificate of title is not required for a vehicle owned by a carrier that is from a jurisdiction that is not a participant in the International Fuel Tax Agreement, that is authorized by the United States government to conduct cross-border operations beyond the commercial border zone pursuant to the provisions of the North American Free Trade Agreement, and that identified New Mexico as the carrier's base jurisdiction.

**The 2001 amendment,** effective June 15, 2001, added Paragraph A(8).

**The 1999 amendment,** effective July 1, 1999, in Subsection A, substituted "is subject to" for "shall be subject to", redesignated the ending language of Subsection A as Subsection A(1) which now reads "any such vehicle driven or moved upon a highway in conformance with the provisions of the Motor Vehicle Code relating to manufacturers, dealers, lien-holders or nonresidents"; redesignated Subsections B to E as Subsections A(2) to A(5), added Subsections A(6) and A(7), redesignated former Subsections F and G as Subsections B and C, and made stylistic changes.

## I. GENERAL CONSIDERATION.

**Lessee driving unregistered vehicle.** — Even if a lessee is not responsible for the registration of a vehicle, it would be unlawful for him to drive the vehicle on the New Mexico highways if it was not registered. 1969 Op. Att'y Gen. No. 69-95.

**No impoundment of vehicle as security for fine.** — A motor vehicle being driven by a person charged with violation of the registration laws may not be impounded and held as security for the fine. 1953 Op. Att'y Gen. No. 53-5732.

**Registration of "go-carts".** — The self-propelled "go-cart" was a motor vehicle within the intendment of Section 64-1-6, 1953 Comp. (similar to Section 66-1-4.19 NMSA 1978) and was, therefore, subject to registration pursuant to Section 64-3-2, 1953 Comp. (similar to this section) if it was "driven or moved upon a highway." 1964 Op. Att'y Gen. No. 64-148.

**Push mobiles.** — Go-carts which were not self-propelled but were used as a "push mobile" were "devices moved by human power" expressly excepted from the definition of "vehicle" in Section 64-1-6, 1953 Comp. (similar to Section 66-1-4.19 NMSA 1978) and, therefore, not subject to registration pursuant to Section 64-3-2, 1953 Comp. (similar to this section). 1964 Op. Att'y Gen. No. 64-148.

## II. MANUFACTURERS, DEALERS AND NONRESIDENTS.

**Nonresident students.** — Motor vehicles that are used or operated in New Mexico for more than 30 days by college students who pay nonresident tuition but who are not gainfully employed in New Mexico are subject to registration in New Mexico even though the owner of the motor vehicle resides outside New Mexico and has registered the motor vehicle in his state of residency. 1968 Op. Att'y Gen. No. 68-16.

**Military personnel.** — The Soldiers' and Sailors' Civil Relief Act (now Servicemembers Civil Relief Act), as applied to motor vehicle registration fees, supersedes the New Mexico law on the subject and the New Mexico law has absolutely no application to persons subject to and who are beneficiaries of the Soldiers' and Sailors' Civil Relief Act (now Servicemembers Civil Relief Act). Therefore, unless a definite indication is made by the soldier or sailor that he has changed his domicile and fully intends that New Mexico be his domicile, and unless that intent is so expressed or unless the person is using the automobile in his trade or business, New Mexico has no authority to require the registration of his motor vehicle in this state. 1953 Op. Att'y Gen. No. 53-5661.

## III. CROSSING HIGHWAY.

**Crossings within exemption.** — The legislature intended that where the crossing required a movement on a highway of more than a relatively short distance, that the exemption should not apply since a person then would be obtaining a use of the highway for which a registration fee should be exacted. 1956 Op. Att'y Gen. No. 56-6429.

**Logging truck.** — A truck used for logging purposes only is subject to the registration and certificate of title provisions of the Motor Vehicle Act unless it is not moved on the highway except to cross it. 1960 Op. Att'y Gen. No. 60-178.

**Snowmobiles.** — Snowmobiles, which are occasionally used to cross highways, are not required to be titled and registered. 1967 Op. Att'y Gen. No. 67-76.

## IV. IMPLEMENTS OF HUSBANDRY.

**Farm tractors, wagons, and movable implements** such as cultivators, combines, etc., are certainly exempt and other vehicles which do not meet the qualifications for registration are exempt. 1956 Op. Att'y Gen. No. 56-6429.

**Vehicle used as implement exclusively on one's property.** — A vehicle which is used as an implement of husbandry, but which is not specifically designed for agricultural purposes, would fall within Section 64-3-2, 1953 Comp. (similar to this section). Such a vehicle is subject to registration if used upon the highways, provided, of course, that such vehicle meets the specifications pertaining to width, height, length, etc. Such a vehicle can be used exclusively on one's property and not used on the highway and be exempt from registration. 1956 Op. Att'y Gen. No. 56-6429.

**Pickup truck per se** is not an implement of husbandry but could possibly be so used and be exempt from registration. However, if the same is operated on the highways more than just to cross a highway in moving from one property to another, it would be subject to registration. 1956 Op. Att'y Gen. No. 56-6429.

**Fertilizer tank trailers which are towed to fields.** — Four wheel fertilizer tank trailers, which are six or seven feet long, have a capacity of 500 or 600 gallons, and are loaded from large stationary tanks at the suppliers and then towed to points where commodity is to be used, where the tank is left at the delivery point until the commodity has been used, are subject to motor vehicle licensing in New Mexico. 1967 Op. Att'y Gen. No. 67-73.

## V. SPECIAL MOBILE EQUIPMENT.

**The "mole"** cannot be classified as a vehicle under the Motor Vehicle Code because it is not a device upon, or by which, persons or property may be transported upon a highway. Gibbons & Reed Co. v. Bureau of Revenue, 1969-NMSC-096, 80 N.M. 462, 457 P.2d 710.

**Vehicle designed exclusively for transporting well drilling equipment.** — While it is true that a "well servicing unit" is not included in the statutory definition of special mobile equipment, it would appear that the unit was designed solely and exclusively for the purpose of transporting the particular machinery for which it is designed and for the accommodation of driver for the same. It is not designed primarily for the transportation of persons or property save as an incident of its use at an appropriate location. A well servicing unit is within the general terms of "special mobile equipment." 1958 Op. Att'y Gen. No. 58-115.

**Trailer equipment used on highway only incidentally.** — Although any exemption under the 1953 Motor Vehicle Code can only be determined by a court of competent jurisdiction upon a proper complaint of the law enforcement agency observing the use of the vehicle in question, motor vehicular equipment consisting of a tractor which hauls a trailer which is well drilling apparatus, the tractor equipment would not be considered exempt as well drilling apparatus, but the trailer equipment, if being used upon the highway only incidentally to the function of digging wells, would be exempt from registration. 1954 Op. Att'y Gen. No. 54-5906.

**Special vehicle hauling exceptional load on highways.** — A special motor vehicle rented by a New Mexico firm from an Arizona company and used to haul an exceptional load over New Mexico roads was not "special mobile equipment," despite the fact that it was not normally used for transportation of property over highways. 1969 Op. Att'y Gen. No. 69-95.

**Trenching machine conforming to highway operation requirements.** — A trenching machine which is mounted upon a regular truck chassis and which is designed for ready and easy use upon the state highways of New Mexico and conforms with the

requirements of the New Mexico state highway department for operation upon the highways is not exempt from registration. 1953 Op. Att'y Gen. No. 53-5735.

### VI. HOUSE TRAILERS.

**House trailers owned by nonmilitary personnel.** — The language of the statute covering house trailers is unequivocal. Nonmilitary personnel owning such a vehicle must either have current plates from another state or country or be currently registered in New Mexico regardless of intended use so long as they maintain their characteristic of being a mobile home. 1959 Op. Att'y Gen. No. 59-53.

**House trailers owned by military personnel.** — House trailers owned by military personnel and located on non-federal reservations are required to display current license plates issued by their place of residence or domicile. 1965 Op. Att'y Gen. No. 65-131.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 75 to 84.

Validity of motor vehicle registration laws applied to corporation domiciled in state but having branch trucking bases in other states, 16 A.L.R.2d 1414.

Lack of automobile registration as evidence of negligence, 29 A.L.R.2d 963.

What constitutes farm vehicle, construction equipment, or vehicle temporarily on highway exempt from registration as motor vehicle, 27 A.L.R.4th 843.

60 C.J.S. Motor Vehicles § 58.

## 66-3-1.1. Motor carriers required to register with the department.

A. All motor carriers desiring and eligible for annual registration provisions relating to the international registration plan shall register their vehicles with the department. The department shall register all motor carriers who satisfy all New Mexico requirements relating to motor carriers, but may refuse to register any vehicle subject to the federal heavy vehicle use tax imposed by Section 4481 of the United States Internal Revenue Code of 1986 without proof of payment of such tax in the form prescribed by the secretary of the treasury of the United States. Registration of motor carrier vehicles with the department shall remain in force during the calendar registration year as specified in Section 66-3-2.1 NMSA 1978 unless suspended or canceled by the department for noncompliance with any New Mexico motor vehicle or motor carrier requirements.

B. In addition to the provisions of Subsection A of this section, motor carriers operating vehicles subject to the weight distance tax pursuant to the Weight Distance Tax Act [Chapter 7, Article 15A NMSA 1978] or vehicles subject to special fuel user

permit requirements pursuant to the Special Fuels Supplier Tax Act [Chapter 7, Article 16A NMSA 1978] shall apply for a tax identification permit.

**History:** 1953 Comp., § 64-34-14, enacted by Laws 1978, ch. 18, § 1; 1984 (1st S.S.), ch. 9, § 1; 1992, ch. 106, § 6; 1993, ch. 294, § 4; 1978 Comp., § 65-1-12, recompiled as 1978 Comp., § 66-3-1.1 by Laws 1998 (1st S.S.), ch. 10, § 10; 2007, ch. 209, § 4; 2015, ch. 9, § 2.

## ANNOTATIONS

**Repeals and reenactments.** — Laws 1978, ch. 18, § 1, repealed 64-34-14, 1953 Comp. (former 65-1-12 NMSA 1978), relating to registration requirement for motor carriers, and enacted a new 65-1-12 NMSA 1978.

Laws 1998 (1st S.S.), ch. 10, § 10, recompiled former 65-1-12 NMSA 1978, relating to the requirement that motor carriers register with the department, as 66-3-1.1 NMSA 1978, effective July 1, 1998.

**Cross references.** — For Section 4481 of the United States Internal Revenue Code of 1986, *see* 26 U.S.C. § 4481.

**The 2015 amendment,** effective July 1, 2015, provided for the registration of motor carriers desiring to comply with, and eligible for registration provisions relating to, the international registration plan; in Subsection A, after "registration provisions relating to", deleted "proportional registration or full reciprocity" and added "the international registration plan", and after "Section", deleted "65-1-13 or".

**The 2007 amendment,** effective July 1, 2007, added the reference to Section 66-3-2.1 NMSA 1978.

**The 1993 amendment,** effective July 1, 1993, inserted "Supplier" near the end of Subsection B.

**The 1992 amendment,** effective July 1, 1992, substituted "department" for "division" in the section catchline; designated the formerly undesignated provisions as Subsection A; in Subsection A, deleted the former second sentence, which read: "In addition, motor carriers operating vehicles subject to use fee requirements set forth in Section 66-6-28 NMSA 1978 or vehicles subject to special fuel user permit requirements shall register their vehicles with the division", substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954" in the second sentence, and substituted "department" for "division" several times throughout the subsection; and added Subsection B.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 13 Am. Jur. 2d Carriers §§ 75, 76, 100 to 104.

60 C.J.S. Motor Vehicles §§ 101 to 103.

## 66-3-1.2. Registration; declared gross weight.

Except as otherwise provided by law, the division shall register each truck, truck tractor, road tractor and bus required to be registered under the international registration plan or reciprocal agreements with other jurisdictions for a declared gross weight not to exceed the legal limitation established by this state.

**History:** 1953 Comp., § 64-34-28, enacted by Laws 1972, ch. 7, § 50; § 1977, ch. 250, § 131; 1978 Comp., § 65-1-37, recompiled as 1978 Comp., § 66-3-1.2 by Laws 1998 (1st S.S.), ch. 10, § 10; 2015, ch. 9, § 3.

**ANNOTATIONS**

**Recompilations.** — Laws 1998 (1st S.S.), ch. 10, § 10, recompiled former 65-1-37 NMSA 1978, relating to proportional registration or reciprocal agreements with other jurisdictions for a declared gross weight, as 66-3-1.2 NMSA 1978, effective July 1, 1998.

**The 2015 amendment,** effective July 1, 2015, provided for vehicle registrations under the international registration plan for a declared gross weight and removed proportional registration for a declared gross weight; after "registered under the", deleted "proportional registration" and added "international registration plan".

## 66-3-1.3. Unregistered foreign commercial motor carrier vehicle operations.

A. As used in this section:

(1) "foreign commercial motor carrier vehicle" means a commercial motor carrier vehicle as defined in Subsection C of Section 65-1-2 NMSA 1978 that is titled and licensed in a jurisdiction other than New Mexico;

(2) "registrant" means the person accepting financial responsibility for payment of all fees and taxes that become due as a result of vehicle operations. Financial responsibility is assigned to the person named on the registration application;

(3) "short-term" means for a period of more than forty-eight hours and less than one hundred eighty days;

(4) "short-term registration" means meeting all registration, licensing, posting of security and taxation requirements as provided in this section; and

(5) "unregistered" means a foreign commercial motor carrier vehicle not registered with the department under the provisions of Section 65-1-12 NMSA 1978, Subsection B of Section 66-3-5 NMSA 1978 and, if applicable, the tax-excluded user permit provisions of Section 7-16-6 NMSA 1978.

B. The owner of a foreign commercial motor carrier vehicle that is to be operated within the state on a short-term basis shall comply with the short-term registration provisions as provided in this section before operating the vehicle upon the highways of New Mexico. If an owner or operator of a foreign commercial motor carrier vehicle does not comply with the short-term registration provisions as provided in this section, the owner or operator shall:

(1) stop at a port of entry and pay all applicable fees and taxes on a trip basis in accordance with normal fee and tax schedules applicable to unregistered vehicles; or

(2) register with the department in accordance with all registration and permit requirements as specified by this section.

C. Any owner or operator electing to register a foreign commercial motor carrier vehicle with the department on a short-term basis shall meet the following requirements before operating that vehicle upon the highways of New Mexico:

(1) file with the department a short-term registration application that provides the following information for each commercial motor carrier vehicle to be operated under this section:

(a) base state;

(b) unit number;

(c) year and make of vehicle;

(d) vehicle serial number;

(e) declared gross weight;

(f) type of fuel;

(g) name and complete address of the registrant;

(h) individual vehicle highway miles and miles per gallon for each vehicle registered under this section; and

(i) proof of financial responsibility as required in the Motor Transportation Act [Chapter 65, Articles 1, 3 and 5 NMSA 1978];

(2) remit with the application the registration fees as specified in Subsection B of 66-6-4 NMSA 1978; and

(3) file with the application cash security in the amount of three times the estimated use fee and special fuels tax due at the current tax rates.

D. Upon receipt of an application, fees and security pursuant to Subsection C of this section, the department shall issue to the applicant a short-term registration plate and registration document for each foreign commercial motor carrier vehicle. The registration plate shall display the expiration date of the short-term registration period and shall be affixed to the front passenger windshield of the foreign commercial motor carrier vehicle, and the registration document shall be carried in the vehicle during the period of operation in New Mexico. The department shall provide to the applicant weight distance and special fuels tax reporting forms on which the applicant shall report and pursuant to which the applicant shall pay weight distance and special fuels taxes upon actual miles operated and gallons consumed, at the rates and in the manner established by the Weight Distance Tax Act [Chapter 7, Article 15A NMSA 1978] and the Special Fuels Tax Act [Chapter 7, Article 16A NMSA 1978]. The department may assign the one-way haul-use fee rate pursuant to Section 7-15A-6 NMSA 1978 provided the conditions of that section are met by the applicant.

E. The failure of any owner to comply with the requirements of this section is a misdemeanor, and the department or its authorized agent may detain any vehicle until all fees and taxes are paid and all requirements of this section are met.

F. Within twenty days after the conclusion of the short-term registration period, the registrant shall file with the department the required tax report along with payment of all weight distance tax and special fuels tax due. Upon verification of accurate reporting and payment, the department shall refund the security previously filed by the registrant.

G. In the event the registrant fails to submit the required tax report within twenty days as specified in Subsection F of this section, the registrant shall forfeit the full amount of security required under this section.

H. Any foreign commercial motor carrier vehicle to be operated in excess of one hundred eighty days shall comply with all registration requirements for commercial motor carrier vehicles titled and licensed in New Mexico.

**History:** 1978 Comp., § 65-5-4, enacted by Laws 1983, ch. 142, § 3; 1992, ch. 106, § 21; recompiled as 1978 Comp., § 66-3-1.3 by Laws 1998 (1st S.S.), ch. 10, § 10.

## ANNOTATIONS

**Recompilations.** — Laws 1998 (1st S.S.), ch. 10, § 10, recompiled former 65-5-4 NMSA 1978, relating to unregistered foreign commercial motor carrier vehicle operations, as 66-3-1.3 NMSA 1978, effective July 1, 1998.

**The 1992 amendment,** effective July 1, 1992, inserted "commercial motor carrier" in Subsection A(1); rewrote Subsection D; substituted "weight distance tax" for "use fees" in the first sentence of Subsection F; substituted "department" for "division" several times throughout the section; and made minor stylistic changes throughout the section.

## 66-3-1.4. Motorcycle endorsement not required for autocycle operation.

Autocycles shall be registered as motorcycles and proof of financial responsibility may characterize them as motorcycles, but a driver shall not be required to have a motorcycle endorsement to operate an autocycle.

**History:** Laws 2015, ch. 53, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2015, ch. 53 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2015, 90 days after the adjournment of the legislature.

## 66-3-2. Registration; trailers, semitrailers, pole trailers and freight trailers.

A. The motor transportation division of the department of public safety and the motor vehicle division of the taxation and revenue department, according to their appropriate jurisdictions, shall grant permanent registration to freight trailers subject to registration and may grant permanent registration to utility trailers not used in commerce whose gross vehicle weight is less than six thousand one pounds upon application and payment of the fee required by Section 66-6-3 NMSA 1978. The registration shall expire, however, upon the transfer of title or interest in the vehicle, at which time the vehicle shall be reregistered.

B. In registering trailers, semitrailers and pole trailers, the motor transportation division and the motor vehicle division may require such information and documents and may make such tests and investigations as they deem necessary and practicable to determine or to verify the empty weights and gross vehicle weights and to ensure that the vehicles may be safely and legally operated upon the highways of this state.

**History:** 1953 Comp., § 64-3-2, enacted by Laws 1978, ch. 35, § 22; 1999, ch. 227, § 2; 2007, ch. 319, § 14.

**ANNOTATIONS**

**Cross references.** — For penalty for fraudulent applications, *see* 66-8-1 NMSA 1978.

**The 2007 amendment,** effective June 15, 2007, revised the descriptions of the motor transportation division of the department of public safety and the motor vehicle division of the taxation and revenue department.

**The 1999 amendment,** effective July 1, 1999, in Subsection A, inserted "subject to registration and may grant a permanent registration to utility trailers not used in commerce whose gross vehicle weight is less than six thousand one pounds" and substituted "66-6-3 NMSA 1978" for "64-6-3 NMSA 1953 when according to Subsection B of this section registration is required" in the first sentence; deleted former Subsection B and redesignated former Subsection C as Subsection B; in Subsection B, substituted "the divisions" for "the motor vehicle and motor transportation divisions" and made stylistic changes; and in Subsection B(3), substituted "all registration and registration plates in the fleet" for "all registrations in the fleet".

## 66-3-2.1. Full reciprocity registration; application; fee; formula; payment.

A. Any owner, except an owner of a one-way rental fleet, may, in lieu of registration of vehicles under the provisions of Sections 66-6-3 and 66-6-4 NMSA 1978, register for operation in this state by filing an application with the division that shall contain the following information and such other information pertinent to vehicle registration as the division may require:

(1) total miles, which is the total number of miles operated in all jurisdictions during the required reporting period by the motor vehicles in the fleet during that year; and

(2) a description and identification of each motor vehicle of the fleet that is to be operated in this state during the registration year for which international registration plan registration is requested.

B. The application for each carrier shall be supported, at the time and in the manner required by the division, by a fee payment computed as follows:

(1) divide the sum of in-state miles by total international registration plan registered vehicle miles;

(2) determine the total amount necessary under Sections 66-6-3 and 66-6-4 NMSA 1978 to register each vehicle for which international registration plan registration is requested, based on the regular annual fees or applicable fees for the unexpired portion of the registration year; and

(3) multiply the sum obtained under Paragraph (2) of this subsection by the fraction obtained under Paragraph (1) of this subsection.

**History:** 1953 Comp., § 64-34-14.1, enacted by Laws 1978, ch. 17, § 1; 1988, ch. 24, § 2; 1978 Comp., § 65-1-13, recompiled as 1978 Comp., § 66-3-2.1 by Laws 1998 (1st S.S.), ch. 10, § 10; 2015, ch. 9, § 4.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1978, ch. 17, § 1, repealed 64-34-14.1, 1953 Comp. (former 65-1-13 NMSA 1978), relating to proportional registration of fleets, and enacted a new 65-1-13 NMSA 1978.

Laws 1998 (1st S.S.), ch. 10, § 10, recompiled former 65-1-13 NMSA 1978, relating to proportional registration of fleets, as 66-3-2.1 NMSA 1978, effective July 1, 1998.

**The 2015 amendment,** effective July 1, 2015, provided for full reciprocal agreement registrations under the international registration plan and removed proportional agreement registrations; in the catchline, deleted "proportional registration of fleets" and added "full reciprocity registrations"; in the introductory paragraph of Subsection A, after "one-way rental fleet,", deleted "engaged in operating one or more fleets", after "register", deleted "each fleet", and after "division", changed "which" to "that"; in Subsection A, Paragraph (1), after "total", deleted "fleet", and after "during the", deleted "preceding year" and added "required reporting period"; deleted former Subsection A, Paragraph (2), and redesignated former Paragraph (3) as Paragraph (2), and after "fleet", changed "which" to "that", and after "which", deleted "proportional fleet" and added "international registration plan"; in the introductory paragraph of Subsection B, after "each", deleted "fleet" and added "carrier"; in Subsection B, Paragraph (1), after "total", deleted "fleet" and added "international registration plan registered vehicle"; and in Subsection B, Paragraph (2), after "vehicle", deleted "in the fleet", and after "which", added "international registration plan".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 76 to 78; 13 Am. Jur. 2d Carriers § 75.

## 66-3-2.2. Registration and identification of vehicles registered under the international registration plan; fee; effect of registration.

A. The division shall register the vehicles so described and identified in an application and may issue a registration plate or a distinctive sticker or other suitable identification device for each vehicle described in the application upon payment of the appropriate fees for the application. The registration card shall bear upon its face information required by the division to identify it as a qualified registered vehicle under the international registration plan and other information required by law and regulation and shall be carried in the vehicle at all times.

B. Vehicles so registered and identified shall be deemed to be fully registered in this state for any type of movement or operation, provided that all other state requirements have been met.

**History:** 1953 Comp., § 64-34-14.2, enacted by Laws 1972, ch. 7, § 34; 1977, ch. 250, § 112; 1988, ch. 24, § 3; 1978 Comp., § 65-1-14, recompiled as 1978 Comp., § 66-3-2.2 by Laws 1998 (1st S.S.), ch. 10, § 10; 2015, ch. 9, § 5.

**ANNOTATIONS**

**Recompilations.** — Laws 1998 (1st S.S.), ch. 10, § 10, recompiled former 65-1-14 NMSA 1978, relating to registration and identification of proportionally registered vehicles, as 66-3-2.2 NMSA 1978, effective July 1, 1998.

**The 2015 amendment,** effective July 1, 2015, provided for registration and identification for vehicles registered under the international registration plan; in the catchline, after "identification of", deleted "proportionally registered", and after "vehicles", added "registered under the international registration plan"; in Subsection A, after "identified", added "in an application", after "qualified", deleted "proportionally", and after "vehicle", added "under the international registration plan"; and in Subsection B, deleted "Fleet" preceding "Vehicles".

## 66-3-2.3. Full reciprocity registration; jurisdictions.

The right to the privileges and benefits of registration under the international registration plan extended by Sections 66-3-2.1 through 66-3-2.10 NMSA 1978 or by any contract, agreement or declaration made accordingly shall be subject to the condition that each vehicle registered in this state shall also be properly registered in all other jurisdictions during the registration period.

**History:** 1953 Comp., § 64-34-14.3, enacted by Laws 1972, ch. 7, § 35; 1988, ch. 24, § 4; 1978 Comp., § 65-1-15, recompiled as 1978 Comp., § 66-3-2.3 by Laws 1998 (1st S.S.), ch. 10, § 10; 2015, ch. 9, § 6.

**ANNOTATIONS**

**Recompilations.** — Laws 1998 (1st S.S.), ch. 10, § 10, recompiled former 65-1-15 NMSA 1978, relating to proportional registration in other jurisdictions, as 66-3-2.3 NMSA 1978, effective July 1, 1998.

**The 2015 amendment,** effective July 1, 2015, provided for full reciprocity registration in all other jurisdictions when registered under the international registration plan; in the catchline, deleted "Proportional" and added "Full reciprocity"; in the first sentence of the section, after "benefits of", deleted "proportional", after "registration", deleted "of fleet vehicles" and added "under the international registration plan", after "Sections", deleted "65-1-13 through 65-1-23" and added "66-3-2.1 through 66-3-2.10", after "each", deleted "fleet", after "vehicle", deleted "proportionally", after "shall also be", deleted "proportionally or otherwise", after "properly registered in", deleted "at least one" and added "all", after "other", changed "jurisdiction" to "jurisdictions", after "during the", added "registration", and after "period", deleted the remainder of the section.

## 66-3-2.4. Registration of additional motor vehicles.

Motor vehicles acquired by the owner after the commencement of the registration year shall be proportionally registered by applying the "New Mexico mileage percentage", which is the figure resulting from the division of in-state miles by total fleet

miles used in the original application, for all of the fleet vehicles for the registration period to the regular registration fees due with respect to the added motor vehicles for the remainder of the registration year. The registration fee for additional motor vehicles shall be prorated on a quarterly basis.

**History:** 1953 Comp., § 64-34-14.4, enacted by Laws 1972, ch. 7, § 36; 1978 Comp., § 65-1-16, recompiled as 1978 Comp., § 66-3-2.4 by Laws 1998 (1st S.S.), ch. 10, § 10; 2015, ch. 9, § 7.

**ANNOTATIONS**

**Recompilations.** — Laws 1998 (1st S.S.), ch. 10, § 10, recompiled former 65-1-16 NMSA 1978, relating to registration of additional motor vehicles, as 66-3-2.4 NMSA 1978, effective July 1, 1998.

**The 2015 amendment,** effective July 1, 2015, removed the reference to "vehicles subsequently added to a proportionally registered fleet" from those vehicles added and proportionally registered after the commencement of the registration year; after "registration year", deleted "and subsequently added to a proportionally registered fleet".

## 66-3-2.5. Withdrawal of fleet motor vehicles; notification; surrender of documents.

If any motor vehicle is withdrawn from a full reciprocity registered fleet during the period for which it is registered in this state, the owner of the fleet shall notify the division on forms it has prescribed. The division shall require the owner to surrender registration cards and other identification devices that have been issued with respect to the motor vehicle.

**History:** 1953 Comp., § 64-34-14.5, enacted by Laws 1972, ch. 7, § 37; 1977, ch. 250, § 113; 1978 Comp., § 65-1-17, recompiled as 1978 Comp., § 66-3-2.5 by Laws 1998 (1st S.S.), ch. 10, § 10; 2015, ch. 9, § 8.

**ANNOTATIONS**

**Recompilations.** — Laws 1998 (1st S.S.), ch. 10, § 10, recompiled former 65-1-17 NMSA 1978, relating to withdrawal of fleet motor vehicles, notification and surrender of documents, as 66-3-2.5 NMSA 1978, effective July 1, 1998.

**The 2015 amendment,** effective July 1, 2015, removed the reference to "proportionally" registered vehicles from those vehicles withdrawn from a registered fleet that are required to surrender registration documents; after "withdrawn from a", deleted "proportionally" and added "full reciprocity", after "surrender", deleted "proportional", after "identification devices", changed "which" to "that", and after "with respect to", deleted "such" and added "the".

## 66-3-2.6. Preservation of international registration plan records; audit.

Any owner whose application for registration under the international registration plan has been accepted shall preserve the records on which the application is based either for a period of four years following the year or period upon which the application is based or for any other period required by the state that is considered to be the base state of the vehicle under the terms of a multistate agreement on registration of vehicles to which this state is a party. Upon request of the division, the owner shall make the records available to the division at the owner's office for audit as to accuracy of computation and payments. If the owner maintains and keeps the owner's records, books or papers at any place outside of the state, the director or the director's authorized agent may examine them at the place where they are kept. The division may make arrangements with agencies of other jurisdictions administering motor vehicle laws for joint audits of any such owners.

**History:** 1953 Comp., § 64-34-14.6, enacted by Laws 1972, ch. 7, § 38; 1977, ch. 250, § 114; 1988, ch. 24, § 5; 1989, ch. 148, § 2; 1978 Comp., § 65-1-18, recompiled as 1978 Comp., § 66-3-2.6 by Laws 1998 (1st S.S.), ch. 10, § 10; 2015, ch. 9, § 9.

**ANNOTATIONS**

**Recompilations.** — Laws 1998 (1st S.S.), ch. 10, § 10, recompiled former 65-1-18 NMSA 1978, relating to preservation of proportional registration records and audit, as 66-3-2.6 NMSA 1978, effective July 1, 1998.

**The 2015 amendment,** effective July 1, 2015, provided for the preservation of records related to the international registration plan and removed the reference to proportional registration records; in the catchline, after "Preservation of", deleted "proportional registration" and added "international registration plan"; in the first sentence of the section, after "application for", deleted "proportional", after "registration", added "under the international registration plan"; and in the third sentence, after "the owner maintains and keeps", deleted "his" and added "the owner’s", and after "the director or", deleted "his" and added "the director’s".

**The 1989 amendment,** effective July 1, 1990, deleted "and the owner shall pay all necessary traveling expenses and subsistence incurred" at the end of the next-to-last sentence.

## 66-3-2.7. New registrant; estimated mileage.

When a registrant's fleet is considered new under the international registration plan, fees shall be calculated using New Mexico's average per vehicle distance chart. A new registrant shall be registered in all international registration plan jurisdictions.

**History:** 1953 Comp., § 64-34-14.7, enacted by Laws 1972, ch. 7, § 39; 1977, ch. 250, § 115; 1978 Comp., § 65-1-19, recompiled as 1978 Comp., § 66-3-2.7 by Laws 1998 (1st S.S.), ch. 10, § 10; 2015, ch. 9, § 10.

**ANNOTATIONS**

**Recompilations.** — Laws 1998 (1st S.S.), ch. 10, § 10, recompiled former 65-1-19 NMSA 1978, relating to estimated mileage for new fleets, as 66-3-2.7 NMSA 1978, effective July 1, 1998.

**The 2015 amendment,** effective July 1, 2015, changed the method of calculation of fees when a registrant's fleet is considered new under the international registration plan; in the catchline, after "New", deleted "fleet" and added "registrant"; deleted the language in the section in its entirety and added the present language relating to the new method of calculating fees when a registrant's fleet is considered new under the international registration plan.

## 66-3-2.8. Fleet registration; denial.

The division may refuse to accept full reciprocity registration applications for the registration of vehicles based in another jurisdiction if the division finds that the other jurisdiction does not grant similar registration privileges to fleet vehicles based in or owned by residents of this state.

**History:** 1953 Comp., § 64-34-14.8, enacted by Laws 1972, ch. 7, § 40; 1977, ch. 250, § 116; 1978 Comp., § 65-1-20, recompiled as 1978 Comp., § 66-3-2.8 by Laws 1998 (1st S.S.), ch. 10, § 10; 2015, ch. 9, § 11.

**ANNOTATIONS**

**Recompilations.** — Laws 1998 (1st S.S.), ch. 10, § 10, recompiled former 65-1-20 NMSA 1978, relating to denial of fleet registration, as 66-3-2.8 NMSA 1978, effective July 1, 1998.

**The 2015 amendment,** effective July 1, 2015, provided the authority to deny full reciprocity registration applications for the registration of vehicles based in other jurisdictions if the other jurisdiction does not grant similar registration privileges; after "refuse to accept", deleted "proportional" and added "full reciprocity", after the second occurrence of "division", deleted "shall find" and added "finds", and after "that", deleted "such" and added "the".

## 66-3-2.9. Relationship to other state laws.

The provisions of Sections 66-3-2.1 through 66-3-2.10 NMSA 1978 constitute complete authority for the registration of fleet vehicles without reference to or application

of any other statutes of this state except as expressly provided in the Motor Transportation Act [Chapter 65, Articles 1, 3 and 5 NMSA 1978].

**History:** 1953 Comp., § 64-34-14.9, enacted by Laws 1972, ch. 7, § 41; 1978 Comp., § 65-1-21, recompiled as 1978 Comp., § 66-3-2.9 by Laws 1998 (1st S.S.), ch. 10, § 10; 2015, ch. 9, § 12.

**ANNOTATIONS**

**Recompilations.** — Laws 1998 (1st S.S.), ch. 10, § 10, recompiled former 65-1-21 NMSA 1978, relating to relationship to other state laws, as 66-3-2.9 NMSA 1978, effective July 1, 1998.

**The 2015 amendment,** effective July 1, 2015, referenced the sections of law in the NMSA 1978 that provide the authority for registration of fleet vehicles; after "Sections", deleted "65-1-13 through 65-1-23 NMSA 1978 shall" and added "66-3-2.1 through 66-3-2.10 NMSA 1978", and after "fleet vehicles", deleted "upon a proportional registration basis".

## 66-3-2.10. Registration under the international registration plan not exclusive.

Nothing contained in the Motor Transportation Act [Chapter 65, Articles 1, 3 and 5 NMSA 1978] relating to the full reciprocity registration of fleet vehicles shall be construed as requiring any vehicle to be registered pursuant to the international registration plan if it is otherwise registered in this state for the operation in which it is engaged, including, but not by way of limitation, registration, temporary registration permit or trip permit.

**History:** 1953 Comp., § 64-34-14.10, enacted by Laws 1972, ch. 7, § 42; 1978 Comp., § 65-1-22, recompiled as 1978 Comp., § 66-3-2.10 by Laws 1998 (1st S.S.), ch. 10, § 10; 2007, ch. 319, § 15; 2015, ch. 9, § 13.

**ANNOTATIONS**

**Recompilations.** — Laws 1998 (1st S.S.), ch. 10, § 10, recompiled former 65-1-22 NMSA 1978, relating to nonexclusivity of proportional registration, as 66-3-2.10 NMSA 1978, effective July 1, 1998.

**The 2015 amendment,** effective July 1, 2015, clarified that registration under the international registration plan is not required of fleet vehicles if such vehicles are otherwise registered for operation in this state; in the catchline, deleted "Proportional" preceding "registration", and after "registration", added "under the international registration plan"; in the first sentence of the section, after "relating to the", deleted "proportional" and added "full reciprocity", after "any vehicle to be", deleted

"proportionally", and after "registered", added "pursuant to the international registration plan".

**The 2007 amendment,** effective June 15, 2007, changed "regular registration" to "registration" and "temporary registration" to "temporary registration permit".

## 66-3-2.11. Allocation registration; one-way rental fleet vehicles; allocation of vehicles; fee; identification.

A. Any owner of a one-way rental fleet may, in lieu of registration under Sections 66-6-3 and 66-6-4 NMSA 1978, register each fleet for operation in this state by filing with the division an application which contains total fleet miles, in-state miles, a description of each motor vehicle as required in Subsection A of Section 65-1-13 NMSA 1978 and any other information pertinent to vehicle registration as the division may require.

B. The owner of the one-way rental fleet shall designate those vehicles which are to be allocated for registration in New Mexico. The number of vehicles must be equal to or larger than the result of multiplying the total number of vehicles by the ratio of in-state miles to total fleet miles.

C. The fee for one-way rental fleet registration shall be the amount necessary to register each of the vehicles allocated for registration in New Mexico under Sections 66-6-3 and 66-6-4 NMSA 1978.

D. A registration plate and registration card shall be issued by the division for each vehicle allocated for registration in New Mexico. The plate shall be displayed upon the vehicle and the registration card shall be in the vehicle at all times.

E. All vehicles of the one-way rental fleet listed on the application, whether allocated for registration in New Mexico or not, shall be deemed registered for any type of movement or operation, provided that all other state requirements have been met.

F. The provisions of Section 65-1-18 NMSA 1978 pertaining to records and audits shall apply to any owner of a one-way rental fleet who has chosen to allocate vehicles in New Mexico.

**History:** 1953 Comp., § 64-34-14.12, enacted by Laws 1978, ch. 75, § 1; 1988, ch. 24, § 7; 1978 Comp., § 65-1-24, recompiled as § 66-3-2.11 by Laws 1998 (1st S.S.), ch. 10, § 10.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1978, ch. 75, § 1, repealed 64-34-14.12, 1953 Comp. (former 65-1-24 NMSA 1978), relating to allocation registration, one-way rental

fleet vehicles, allocation of vehicles, fee and identification, and enacted a new 65-1-24 NMSA 1978.

**Recompilations.** — Laws 1998 (1st S.S.), ch. 10, § 10, recompiled former 65-1-24 NMSA 1978, relating to allocation registration, one-way rental fleet vehicles, allocation of vehicles, fee, and identification, as 66-3-2.11 NMSA 1978, effective July 1, 1998.

## 66-3-3. Registration card; special plate or sticker; declared gross weight.

A. Each registration card issued for a truck, truck tractor, road tractor or bus shall show the declared gross weight of the vehicle.

B. A special plate or sticker may be issued displaying the declared gross weight. When issued, the special plate or sticker shall be attached to the motive power unit and shall remain attached in such place and manner as is specified by the department.

**History:** 1953 Comp., § 64-3-3, enacted by Laws 1978, ch. 35, § 23; 1995, ch. 135, § 8.

**ANNOTATIONS**

**The 1995 amendment,** effective June 16, 1995, substituted "department" for "motor vehicle and motor transportation divisions" at the end of Subsection B.

## 66-3-3.1. Tax identification permit.

The department shall implement a system for identifying motor carriers subject to the weight distance tax and special fuel user permit requirements, including an identifying number for each motor carrier covered by the system. Annually, the department shall issue one or more original tax identification permits sufficient for the number of vehicles specified by each motor carrier who applies for a tax identification permit; provided that the motor carrier continues to be subject to and in compliance with the weight distance tax and special fuel user permit requirements. The tax identification permit shall contain the department's identifying number for the motor carrier and other information that the department deems necessary. A tax identification permit shall be issued within fourteen days of the date on the form of payment for the permit, including cashier's checks and money orders, submitted with the application for the permit.

**History:** 1978 Comp., § 65-1-12.1, enacted by Laws 1992, ch. 106, § 7; recompiled as 1978 Comp., § 66-3-3.1 by Laws 1998 (1st S.S.), ch. 10, § 10; 2003 (1st S.S.), ch. 3, § 10; 2007, ch. 209, § 5.

**ANNOTATIONS**

**Recompilations.** — Laws 1998 (1st S.S.), ch. 10, § 10, recompiled former 65-1-12.1 NMSA 1978, relating to tax identification cards, as 66-3-3.1 NMSA 1978, effective July 1, 1998.

**The 2007 amendment,** effective July 1, 2007, changed "card" to "permit" and required a tax identification permit to be issued within fourteen days after the date on the form of payment for the permit.

**The 2003 (1st S.S.) amendment,** effective July 1, 2004, substituted "one or more original" for "a" and "cards sufficient for the number of vehicles specified by" for "card in one or more copies to," deleted "the card shall be renewed automatically each year so long as" following "provided that," and inserted "and in compliance with" in the second sentence, and substituted "other information that" for "such other information as" in the last sentence.

## 66-3-4. Application for registration and certificate of title; nonrepairable vehicle certificate.

A. Except for a vehicle owned by a carrier that is from a jurisdiction that is not a participant in the International Fuel Tax Agreement, that is authorized by the United States government or an agency of the United States government to conduct cross-border operations beyond the commercial border zone pursuant to the provisions of the United States-Mexico-Canada Agreement and that identifies New Mexico as the carrier's base jurisdiction, every owner of a vehicle of a type required to be registered in this state shall make application to the division for the registration and issuance of a certificate of title for the vehicle. Applications shall be upon the appropriate forms furnished by the division and shall bear the signature of the owner; provided that the signature may either be made using an electronic signature in conformance with the Electronic Authentication of Documents Act [14-15-1 to 14-15-6 NMSA 1978] and the Uniform Electronic Transactions Act [Chapter 14, Article 16 NMSA 1978] or written with pen and ink. All applications presented to the division shall contain:

(1) for a vehicle other than a recreational vehicle, the name, bona fide New Mexico residence address and mail address of the owner or, if the owner is a firm, association or corporation, the name, bona fide New Mexico business address and mail address of the firm, association or corporation and for a recreational vehicle, the name, bona fide residence address and mail address of the owner and proof of delivery in New Mexico;

(2) a description of the vehicle including, to the extent that the following specified data may exist with respect to a given vehicle, the make, model, type of body, number of cylinders, type of fuel used, serial number of the vehicle, odometer reading, engine or other identification number provided by the manufacturer of the vehicle, whether new or used and, if a vehicle not previously registered, date of sale by the manufacturer or dealer to the person intending to operate the vehicle. In the event a vehicle is designed, constructed, converted or rebuilt for the transportation of property,

the application shall include a statement of its rated capacity as established by the manufacturer of the chassis or the complete vehicle;

(3) a statement of the applicant's title and of all liens or encumbrances upon the vehicle and the names and addresses of all persons having an interest in the vehicle, the nature of each interest and the name and address of the person to whom the certificate of title shall be delivered by the division;

(4) if the vehicle required to be registered is a house trailer, as defined in the Motor Vehicle Code, a certificate from the treasurer or assessor of the county in which the house trailer is located showing that either:

(a) all property taxes due or to become due on the house trailer for the current tax year or any past tax years have been paid; or

(b) no liability for property taxes on the house trailer exists for the current year or any past tax years; and

(5) further information as may reasonably be required by the division to enable it to determine whether the vehicle is lawfully entitled to registration and the owner entitled to a certificate of title.

B. The owner of a vehicle subject to registration that has never been registered in this state and that has been registered in another state, except manufactured homes, shall have the vehicle examined and inspected for its identification number or engine number by the division or an officer or a designated agent of the division incident to securing registration, reregistration or a certificate of title from the division.

C. When an application refers to a vehicle not previously registered and the vehicle is purchased from a dealer licensed in this state or a dealer licensed or recognized as such in any other state, territory or possession of the United States, the application shall be accompanied by a manufacturer's certificate of origin duly assigned by the dealer to the purchaser. In the event that a vehicle not previously registered is sold by the manufacturer to a dealer in a state not requiring a manufacturer's certificate of origin and in the event that the vehicle is subsequently purchased by a dealer or any person in this state, the application for title shall be accompanied by the evidence of title accepted by the state in which the vehicle was sold by the manufacturer to a dealer in that state together with evidence of subsequent transfers.

D. Prior to the sale or disposal of a nonrepairable vehicle, the owner, owner's agent or salvage pool shall obtain a properly endorsed nonrepairable vehicle certificate from the department and deliver it to the purchaser within twenty days after payment in full for the nonrepairable vehicle and shall also comply with Section 66-3-10.1 NMSA 1978. The department shall accept the endorsed nonrepairable vehicle certificate in lieu of the certificate of ownership or other evidence of ownership when accompanied by an application and other documents and fees as may be required by the department. A

vehicle for which a nonrepairable vehicle certificate has been issued shall not be titled or registered for use on the highways of this state.

E. If an insurance company makes a total loss settlement on a nonrepairable vehicle and takes possession of that vehicle, either itself or through an agent or salvage pool, the insurance company or an authorized agent of the insurance company shall:

(1) stamp the face of the title or manufacturer's certificate of origin with the word "NONREPAIRABLE", in letters no less than one-half inch high, at an angle of approximately forty-five degrees to the text of the title or manufacturer's certificate of origin; and

(2) within twenty days after receipt of title by the insurer, free and clear of all liens, submit a copy of the branded title or manufacturer's certificate of title to the department together with documents explaining the reason for branding, and shall forward a properly endorsed certificate of title or manufacturer's certificate of origin or other evidence of ownership acceptable to the department together with the proper fee to the department. The department, upon receipt of the title or manufacturer's certificate of origin or other evidence of ownership, shall issue a nonrepairable vehicle certificate for the vehicle.

F. Any documents used for conveyance of ownership of a motor vehicle to an insurance company as a result of a total loss insurance settlement shall not require a notarized signature and may be signed electronically.

G. If an owner of a nonrepairable vehicle elects to retain possession of the vehicle, the insurance company shall notify the department of the retention on a form prescribed by the department. The insurance company shall also notify the insured or owner of the insured's or owner's responsibility to comply with this section. The owner shall, within twenty days from the date of settlement of the loss, forward a properly endorsed certificate of title or manufacturer's certificate of origin or other evidence of ownership acceptable to the department together with the proper fee to the department. The department, upon receipt of the title or manufacturer's certificate of origin or other evidence of ownership, shall issue a nonrepairable vehicle certificate for the vehicle.

H. If a nonrepairable vehicle is not the subject of an insurance settlement, the owner shall, within twenty days from the date of the loss, forward a properly endorsed certificate of title or manufacturer's certificate of origin or other evidence of ownership acceptable to the department together with the proper fee to the department. The department, upon receipt of the title or manufacturer's certificate of origin or other evidence of ownership, shall issue a nonrepairable vehicle certificate for the vehicle.

I. The department shall not issue a new registration card and certificate of ownership pursuant to Subsection A, B or C of this section on a vehicle that has been issued a nonrepairable vehicle certificate pursuant to Subsections E, G and H of this section.

**History:** 1953 Comp., § 64-3-4, enacted by Laws 1978, ch. 35, § 24; 1978 Comp., § 66-3-4; 1981, ch. 361, § 4; 2001, ch. 9, § 1; 2005, ch. 324, § 7; 2007, ch. 319, § 16; 2007, ch. 320, § 2; 2020, ch. 39, § 1; 2023, ch. 10, § 1.

## ANNOTATIONS

**Cross references.** — For a definition of "house trailer", *see* 66-1-4.8 NMSA 1978.

For registration of off-highway motorcycles, *see* 66-3-1003 NMSA 1978.

For penalty for fraudulent applications, *see* 66-8-1 NMSA 1978.

**The 2023 amendment,** effective June 16, 2023, provided that any documents used for conveyance of ownership of a motor vehicle to an insurance company as a result of a total loss insurance settlement shall not require a notarized signature and may be signed electronically, and made technical amendments; in Subsection A, after "provisions of the", deleted "North American Free Trade" and added "United States-Mexico Canada"; added a new Subsection F, and redesignated the succeeding subsections accordingly; and in Subsection I, after "Subsections E", changed "F" to "G" and after "and", changed "G" to "H".

**The 2020 amendment,** effective July 1, 2020, authorized an application for vehicle registration and certificate of title to be signed electronically; and in Subsection A, in the introductory paragraph, after "shall bear the signature of the owner" added "provided that the signature may either be made using an electronic signature in conformance with the Electronic Authentication of Documents Act and the Uniform Electronic Transactions Act or".

**2007 Amendments.** — Laws 2007, ch. 320, § 2, effective April 2, 2007, amended Subsection A to provide that all vehicles shall be registered except vehicles owned by a carrier that is from a jurisdiction that is not a participant in the International Fuel Tax Agreement, that is authorized by the United States government to conduct cross-border operations beyond the commercial border zone pursuant to the provisions of the North American Free Trade Agreement, and that identifies New Mexico as the carrier’s base jurisdiction.

Laws 2007, ch. 319, § 16, effective June 15, 2007, amended Subsection B to except manufactured homes from the category of vehicles that must be examined and inspected incident to securing registration, reregistration or a certificate of title.

**The 2005 amendment,** effective January 1, 2006, added Subsection D to provide that the seller of a non-repairable vehicle shall obtain and deliver to the purchaser an endorsed non-repairable vehicle certificate within twenty days after payment for the vehicle, that the department shall accept the certificate in lieu of a certificate of ownership, and that a vehicle for which a certificate has been issued shall not be titled or registered for use on the highways; added Subsections E(1) and (2) to provide that if

an insurance company takes a total loss settlement on a non-repairable vehicle and take possession of the vehicle, the insurance company shall stamp the title or manufacturer's certificate with the word "Nonrepairable" and within twenty days after receipt of title, send the branded title to the department; added Subsection F, which provided that if the owner of a non-repairable vehicle retains the vehicle, the owner shall within twenty days after settlement of the loss, send an endorsed certificate of title or manufacturer's certificate to the department; added Subsection G to provide that if a non-repairable vehicle is not subject to an insurance settlement, the owner shall within twenty days after the date of loss send an endorsed certificate of title or manufacturer's certificate to the department; and added Subsection H to provide that the department shall not issue a new registration card and certificate of ownership on a vehicle that has been issued a non-repairable certificate.

**The 2001 amendment,** effective July 1, 2001, amended Paragraph A(1) so that New Mexico residency is not a requirement for registration of certain recreational vehicles in New Mexico; and made stylistic changes throughout the section.

**Responsibility for registration.** — The New Mexico law contemplates that the owner, i.e., the holder of the legal title to a vehicle leased by a New Mexico firm for eight days, is the party responsible for registration. 1969 Op. Att'y Gen. No. 69-95.

**Registration by minor.** — There is nothing in the motor vehicle registration laws which prohibits, restricts or forbids the registration of a motor vehicle in this state in a minor's name. A motor vehicle must be registered by its true owner regardless of the age of that owner. 1953 Op. Att'y Gen. No. 53-5654.

**Filing unacknowledged or unverified applications or assignments.** — The division should accept for filing and, if otherwise proper, treat as valid an application for registration or assignment of title though they are not acknowledged or verified, as the case may be. 1962 Op. Att'y Gen. No. 62-142.

**Effect of licensing as farm vehicle.** — The licensing of a vehicle as a farm vehicle does not restrict the use of such vehicle to exclusive farm purposes and to trips incidental to farming purposes, but only prevents the owner from licensing the vehicle as a farm vehicle and using that vehicle for compensation in the hauling of any item whatsoever unless that item is his own. 1956 Op. Att'y Gen. No. 56-6365.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 85 to 89.

60 C.J.S. Motor Vehicles §§ 70 to 77, 101.

## *66-3-4. Application for registration and certificate of title; nonrepairable vehicle certificate. (Effective July 1, 2024.)*

*A. Except for a vehicle owned by a carrier that is from a jurisdiction that is not a participant in the International Fuel Tax Agreement, that is authorized by the United States government or an agency of the United States government to conduct cross-border operations beyond the commercial border zone pursuant to the provisions of the United States-Mexico-Canada Agreement Implementation Act and that identifies New Mexico as the carrier's base jurisdiction, every owner of a vehicle of a type required to be registered in this state shall make application to the division for the registration and issuance of a certificate of title for the vehicle. Applications shall be upon the appropriate forms furnished by the division and shall bear the signature of the owner; provided that the signature may either be made using an electronic signature in conformance with the Electronic Authentication of Documents Act [14-15-1 to 14-15-6 NMSA 1978] and the Uniform Electronic Transactions Act [Chapter 14, Article 16 NMSA 1978] or written with pen and ink. All applications presented to the division shall contain:*

*(1) for a vehicle other than a recreational vehicle, the name, bona fide New Mexico residence address and mail address of the owner or, if the owner is a firm, association or corporation, the name, bona fide New Mexico business address and mail address of the firm, association or corporation and for a recreational vehicle, the name, bona fide residence address and mail address of the owner and proof of delivery in New Mexico;*

*(2) a description of the vehicle, including, to the extent that the following specified data may exist with respect to a given vehicle, the make, model, type of body, number of cylinders, type of fuel used, serial number of the vehicle, odometer reading, engine or other identification number provided by the manufacturer of the vehicle, whether new or used, and, if a vehicle not previously registered, date of sale by the manufacturer or dealer to the person intending to operate the vehicle. In the event a vehicle is designed, constructed, converted or rebuilt for the transportation of property, the application shall include a statement of its rated capacity as established by the manufacturer of the chassis or the complete vehicle;*

*(3) a statement of the applicant's title and of all liens or encumbrances upon the vehicle and the names and addresses of all persons having an interest in the vehicle, the nature of each interest and the name and address of the person to whom the certificate of title shall be delivered by the division;*

*(4) a space to allow the applicant the option of adding the applicant's vehicle to the nontraditional communication or disability registry; provided that the applicant submits evidence satisfactory to the division that the vehicle will regularly be driven or occupied by a person who has a medical diagnosis by a licensed health practitioner of a condition or disability that may cause the person to fail to be able to communicate with a peace officer or to respond appropriately to a peace officer's commands, including an autism spectrum disorder, deafness, a brain injury, an intellectual disability, a behavioral health disorder, dementia or a seizure disorder;*

*(5) if the vehicle required to be registered is a house trailer, as defined in the Motor Vehicle Code, a certificate from the treasurer or assessor of the county in which the house trailer is located showing that either:*

*(a) all property taxes due or to become due on the house trailer for the current tax year or any past tax years have been paid; or*

*(b) no liability for property taxes on the house trailer exists for the current year or any past tax years; and*

*(6) further information as may reasonably be required by the division to enable it to determine whether the vehicle is lawfully entitled to registration and the owner entitled to a certificate of title.*

*B. The owner of a vehicle subject to registration that has never been registered in this state and that has been registered in another state, except manufactured homes, shall have the vehicle examined and inspected for its identification number or engine number by the division or an officer or a designated agent of the division incident to securing registration, reregistration or a certificate of title from the division.*

*C. When an application refers to a vehicle not previously registered and the vehicle is purchased from a dealer licensed in this state or a dealer licensed or recognized as such in any other state, territory or possession of the United States, the application shall be accompanied by a manufacturer's certificate of origin duly assigned by the dealer to the purchaser. In the event that a vehicle not previously registered is sold by the manufacturer to a dealer in a state not requiring a manufacturer's certificate of origin and in the event that the vehicle is subsequently purchased by a dealer or any person in this state, the application for title shall be accompanied by the evidence of title accepted by the state in which the vehicle was sold by the manufacturer to a dealer in that state together with evidence of subsequent transfers.*

*D. Prior to the sale or disposal of a nonrepairable vehicle, the owner, owner's agent or salvage pool shall obtain a properly endorsed nonrepairable vehicle certificate from the department and deliver it to the purchaser within twenty days after payment in full for the nonrepairable vehicle and shall also comply with Section 66-3-10.1 NMSA 1978. The department shall accept the endorsed nonrepairable vehicle certificate in lieu of the certificate of ownership or other evidence of ownership when accompanied by an application and other documents and fees as may be required by the department. A vehicle for which a nonrepairable vehicle certificate has been issued shall not be titled or registered for use on the highways of this state.*

*E. If an insurance company makes a total loss settlement on a nonrepairable vehicle and takes possession of that vehicle, either itself or through an agent or salvage pool, the insurance company or an authorized agent of the insurance company shall:*

*(1) stamp the face of the title or manufacturer's certificate of origin with the word "NONREPAIRABLE", in letters no less than one-half inch high, at an angle of approximately forty-five degrees to the text of the title or manufacturer's certificate of origin; and*

*(2) within twenty days after receipt of title by the insurer, free and clear of all liens, submit a copy of the branded title or manufacturer's certificate of title to the department together with documents explaining the reason for branding and shall forward a properly endorsed certificate of title or manufacturer's certificate of origin or other evidence of ownership acceptable to the department together with the proper fee to the department. The department, upon receipt of the title or manufacturer's certificate of origin or other evidence of ownership, shall issue a nonrepairable vehicle certificate for the vehicle.*

*F. Any documents used for conveyance of ownership of a motor vehicle to an insurance company as a result of a total loss insurance settlement shall not require a notarized signature and may be signed electronically.*

*G. If an owner of a nonrepairable vehicle elects to retain possession of the vehicle, the insurance company shall notify the department of the retention on a form prescribed by the department. The insurance company shall also notify the insured or owner of the insured's or owner's responsibility to comply with this section. The owner shall, within twenty days from the date of settlement of the loss, forward a properly endorsed certificate of title or manufacturer's certificate of origin or other evidence of ownership acceptable to the department together with the proper fee to the department. The department, upon receipt of the title or manufacturer's certificate of origin or other evidence of ownership, shall issue a nonrepairable vehicle certificate for the vehicle.*

*H. If a nonrepairable vehicle is not the subject of an insurance settlement, the owner shall, within twenty days from the date of the loss, forward a properly endorsed certificate of title or manufacturer's certificate of origin or other evidence of ownership acceptable to the department together with the proper fee to the department. The department, upon receipt of the title or manufacturer's certificate of origin or other evidence of ownership, shall issue a nonrepairable vehicle certificate for the vehicle.*

*I. The department shall not issue a new registration card and certificate of ownership pursuant to Subsection A, B or C of this section on a vehicle that has been issued a nonrepairable vehicle certificate pursuant to Subsections E, G and H of this section.*

***History:*** *1953 Comp., § 64-3-4, enacted by Laws 1978, ch. 35, § 24; 1981, ch. 361, § 4; 2001, ch. 9, § 1; 2005, ch. 324, § 7; 2007, ch. 319, § 16; 2007, ch. 320, § 2; 2020, ch. 39, § 1; 2023, ch. 10, § 1; 2023, ch. 136, § 3.*

***ANNOTATIONS***

***2023 Multiple Amendments.*** *— Laws 2023, ch. 10, § 1, effective June 16, 2023, and Laws 2023, ch. 136, § 3, effective July 1, 2024, enacted different amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 2023, ch. 136, § 3 as the last act signed by the governor is set out above and incorporates both amendments. The amendments enacted by Laws 2023, ch. 10, § 1 and Laws 2023, ch. 136, § 3 are described below. To view the session laws in their entirety, see the 2023 session laws on NMOneSource.com.*

*The nature of the difference between the amendments is that Laws 2023, ch. 10, § 1, provided that any documents used for conveyance of ownership of a motor vehicle to an insurance company as a result of a total loss insurance settlement shall not require a notarized signature and may be signed electronically, and made certain technical amendments, and Laws 2023, ch. 136, § 3, provided that all applications for registration shall contain a space to allow the applicant the option of adding the applicant's vehicle to the nontraditional communication or disability registry.*

***Laws 2023, ch. 136, § 3,*** *effective July 1, 2024, provided that all applications for registration shall contain a space to allow the applicant the option of adding the applicant's vehicle to the nontraditional communication or disability registry; and in Subsection A, added a new Paragraph A(4) and redesignated former Paragraphs A(4) and A(5) as Paragraphs A(5) and A(6), respectively.*

***Laws 2023, ch. 10, § 1,*** *effective June 16, 2023, provided that any documents used for conveyance of ownership of a motor vehicle to an insurance company as a result of a total loss insurance settlement shall not require a notarized signature and may be signed electronically, and made technical amendments; in Subsection A, in the introductory paragraph, after "provisions of the", deleted "North American Free Trade" and added "United States-Mexico Canada"; added a new Subsection F, and redesignated the succeeding subsections accordingly; and in Subsection I, after "Subsections E", deleted "F" and added "G" and after "and", deleted "G" and added "H".*

## 66-3-5. Application for specially constructed, reconstructed or foreign vehicles.

A. In the event the vehicle to be registered is a specially constructed, reconstructed or foreign vehicle, such fact shall be stated in the application and, with reference to every foreign vehicle which has been registered heretofore outside of this state, the owner shall surrender to the division all registration cards and certificates of title, or other evidence of such foreign registration as may be in his possession or under his control, except as provided in Subsection B of this section.

B. Where in the course of interstate operation of a vehicle registered in another state it is desirable to retain registration of said vehicle in such other state, such applicant need not surrender but shall submit for inspection evidence of such foreign registration and the division, upon a proper showing, shall register said vehicle in this state but shall not issue a certificate of title for such vehicle.

**History:** 1953 Comp., § 64-3-5, enacted by Laws 1978, ch. 35, § 25.

## 66-3-6. Temporary registration permits, demonstration permits and transport permits.

A. The department may issue a temporary registration permit to individuals to operate a vehicle pending action by the department upon an application for registration and certificate of title or renewal of registration when the application is accompanied by the proper fees and taxes. The temporary registration permit shall be valid for a period not to exceed thirty business days from the day it is validated by the department. Temporary registration permits shall not be extended nor another issued except for good cause shown.

B. The department may issue a demonstration permit to individuals and financing institutions to operate a vehicle for the purpose of demonstrating the vehicle for resale. The demonstration permit shall be valid for a period not to exceed five business days from the day it is validated by the department. Demonstration permits shall not be extended nor another issued except for good cause shown.

C. The department may issue a transport permit to a manufacturer of vehicles or transporter of manufactured homes for the purpose of demonstrating or transporting the vehicle to a dealer's location. The transport permit shall be valid for a period not to exceed ten business days, shall state the number of days for which the transport permit is valid and shall be validated by the signature of the manufacturer or transporter. Transport permits shall not be extended nor another issued except for good cause shown.

D. The department shall issue transport permits to dealers licensed pursuant to Section 66-4-1 NMSA 1978. Transport permits shall be used only on vehicles held in the inventory of the dealer to whom the transport permits are issued. The transport permits shall be used only for importing vehicles into this state or for transporting vehicles between dealers intrastate. Use of transport permits pursuant to this section shall be deemed compliance with the requirements of Section 66-3-4 NMSA 1978. The transport permits shall be valid for not more than five business days from the date of validation. Transport permits shall:

(1) name the dealer to whom the transport permits are issued;

(2) name the authorized driver of the vehicle;

(3) show the point of origin and termination of the trip covered by the transport permit; and

(4) be signed and dated by the dealer who executed the transport permit.

E. The department shall issue temporary registration permits to dealers licensed pursuant to Section 66-4-1 NMSA 1978. Temporary registration permits shall be used only on vehicles sold at retail by the dealer to whom the temporary registration permits are issued and shall not be extended nor another issued for the same vehicle except for good cause shown. Use of the temporary registration permits pursuant to this section shall be deemed compliance with the provisions of Section 66-3-4 NMSA 1978. The temporary registration permits shall be valid for not more than thirty days from the date of validation. Temporary registration permits shall:

(1) name the dealer to whom the temporary registration permits are issued;

(2) name the person to whom the vehicle has been sold; and

(3) be signed and dated by the dealer who executed the temporary registration permit.

F. The department shall issue demonstration permits to dealers licensed pursuant to Section 66-4-1 NMSA 1978. Demonstration permits shall be used only on vehicles included in the inventory of the dealer to whom the demonstration permits are issued. The demonstration permits shall be used to allow the operation of vehicles for the limited purposes of testing, demonstrating or preparing a vehicle for sale or lease. Demonstration permits may not be used on work or service vehicles, as that term is defined in Section 66-3-401 NMSA 1978, that are owned, used or held in inventory by a dealer. Use of the demonstration permits pursuant to this section shall be deemed compliance with the provisions of Section 66-3-4 NMSA 1978. A demonstration permit, after being affixed to a specific vehicle, shall be valid for as long as the vehicle is held in the dealer's inventory. A dealer who uses demonstration permits is required to maintain a list showing the date on which the dealer assigned the permit to a vehicle and the name and a description of the vehicle, including its make, model, model year and vehicle identification number. A dealer shall maintain the list for three years from the end of the year in which the dealer issued the permit and must make it available to the department or its agents and to law enforcement officers during reasonable business hours. When a vehicle is sold, the dealer shall keep demonstration permits with other records of the sale. A demonstration permit shall:

(1) name the dealer to whom the demonstration permit is issued; and

(2) display a unique identification number assigned by the department.

G. The department may authorize in writing dealers licensed pursuant to Section 66-4-1 NMSA 1978 to print and use at their own cost demonstration permits in conformance with the provisions of Subsection F of this section, subject to reasonable requirements established by the department.

H. The department may authorize agents of the division, in writing, to print and issue demonstration permits to be used by dealers in conformance with the provisions of

Subsection F of this section, subject to reasonable requirements established by the department. Agents who issue demonstration permits shall maintain a list showing the date on which the permit was issued and the name of the dealer to whom it was issued. Agents shall maintain the list for three years from the end of the year in which they issued the permit and shall make it available to the department or its agents, and to law enforcement officers, during reasonable business hours. A demonstration permit shall:

(1) name the dealer to whom the permit is issued; and

(2) display a unique identification number assigned by the department.

I. The department shall prescribe the size, shape and content of all temporary registration permits, demonstration permits and transport permits authorized by this section. A temporary registration permit, demonstration permit or transport permit is not valid until affixed to the vehicle for which it is validated in a manner prescribed by the department.

J. For the misuse of a temporary registration permit, demonstration permit or transport permit authorized by this section by an individual, financing institution, manufacturer of vehicles, transporter of manufactured homes, dealer or auto recycler, the secretary may revoke or suspend the use of that type of permit after a hearing as provided in Section 66-2-17 NMSA 1978.

K. The department shall collect the administrative fee imposed in Section 66-2-16 NMSA 1978 in addition to the actual cost of the temporary registration permit, demonstration permit or transport permit for each permit issued by the department pursuant to this section to individuals, financial institutions, manufacturers, transporters or auto recyclers.

L. The department may issue temporary registration permits, demonstration permits and transport permits to dealers in units of not less than one hundred at a fee established by the department to cover the actual cost of the permits. An administrative fee shall not be charged by the department when permits are issued by the department pursuant to the provisions of this subsection.

M. The fees authorized by Subsections K and L of this section to cover the actual cost of the permits are appropriated to the department to defray the costs of administering the permits program. The department shall remit the administrative fee revenues of this section to the motor vehicle suspense fund to be distributed in accordance with Section 66-6-23 NMSA 1978.

**History:** 1953 Comp., § 64-3-6, enacted by Laws 1978, ch. 35, § 26; 1989, ch. 318, § 4; 1998, ch. 48, § 3; 2007, ch. 319, § 17.

## ANNOTATIONS

**The 2007 amendment,** effective June 15, 2007, provided for the issuance of temporary registration permits, demonstration permits and transport permits; required a dealer who uses demonstration permits to keep certain records; added Subsection H; and relettered Subsections H to L as Subsections I to M.

**The 1998 amendment,** effective July 1, 1998, rewrote the section to the extent that a detailed comparison would be impracticable.

**The 1989 amendment,** effective July 1, 1989, in the introductory paragraph of Subsection B substituted "66-3-402 NMSA 1978" for "64-3-402 NMSA 1953" in the first sentence, substituted "66-3-4 NMSA 1978" for "64-3-4 NMSA 1953" in the fifth sentence, and substituted "66-4-3 NMSA 1978" for "64-4-3 NMSA 1953"; deleted "with the name being filled in by the division at the time of issuance" following "issued" in Subsections B(1) and C(1); in the introductory paragraph of Subsection C substituted "66-3-402 NMSA 1978" for "64-3-402 NMSA 1953" in the first sentence, substituted "66-3-4 NMSA 1978" for "64-3-4 NMSA 1953" in the fourth sentence, and substituted "66-4-3 NMSA 1978" for "64-4-3 NMSA 1953" in the fifth sentence; in Subsection E deleted "state treasurer for coverage into the" preceding "motor vehicle suspense fund", and substituted "66-6-23 NMSA 1978" for "64-6-23 NMSA 1953"; and made minor stylistic changes throughout the section.

**When temporary permits available to manufacturers.** — Upon issuance of a motor vehicle dealers' license to a qualified manufacturer, the division (now department) may thereafter extend the use of temporary transportation {now transport) permits to vehicle manufacturers. 1979 Op. Att'y Gen. No. 79-31.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 153.

60 C.J.S. Motor Vehicles § 78.

## 66-3-7. Grounds for refusing, suspending or revoking registration or certificate of title.

The division may refuse, suspend or revoke registration or issuance of a certificate of title or a transfer of registration upon the ground that:

A. the application contains a false or fraudulent statement or that the applicant failed to furnish the required information or reasonable additional information requested by the division or that the applicant is not entitled to the issuance of a certificate of title or registration of the vehicle under the Motor Vehicle Code [66-1-1 NMSA 1978];

B. the vehicle is mechanically unfit or unsafe to be operated or moved upon the highways;

C. a commercial motor vehicle is operated by a commercial motor carrier that is prohibited from operating the vehicle by order of a state or federal agency;

D. the division has a reasonable ground to believe that the vehicle is a stolen or embezzled vehicle or the granting of registration or the issuance of a certificate of title would constitute a fraud against the rightful owner or other person having valid lien upon the vehicle;

E. the registration of the vehicle stands suspended or revoked for any reason as provided in the motor vehicle laws of this state;

F. the required fee has not been paid;

G. the motor vehicle excise tax has not been paid;

H. the weight distance tax has not been paid;

I. international fuel tax agreement taxes have not been paid;

J. if the vehicle is a mobile home, the property tax has not been paid;

K. the owner's address, as shown in the records of the division, is within a class A county or within a municipality that has a vehicle emission inspection and maintenance program and the applicant has applied at an office outside the designated county or municipality; or

L. the owner is required to but has failed to provide proof of compliance with a vehicle emission inspection and maintenance program, if required in the county or municipality in which the owner resides.

**History:** 1953 Comp., § 64-3-7, enacted by Laws 1978, ch. 35, § 27; 1985, ch. 95, § 4; 1986, ch. 75, § 1; 1995, ch. 127, § 1; 2004, ch. 59, § 5.

## ANNOTATIONS

**Cross references.** — For penalty for false or fraudulent statement in application, *see* 66-8-1 NMSA 1978.

For classification of counties, *see* 4-44-1 NMSA 1978.

**The 2004 amendment,** effective March 4, 2004, added "suspend or revoke" after "refuse" in the introductory language, added Subsection C, redesignated Subsections C to F as Subsections D to G, added Subsections H and I and redesignated Subsections G to I as Subsections J to L.

**The 1995 amendment,** effective June 16, 1995, substituted "within a county or within any municipality" for "within a class A county or municipality within a class A county" in Subsection H.

**Lack of acknowledgment or verification not grounds.** — Section 64-3-6, 1953 Comp. (similar to this section) sets out specific grounds for which the division "may refuse registration or issuance of a certificate of title or any transfer of registration." Lack of an acknowledgment or lack of a verification are not grounds for refusal. 1962 Op. Att'y Gen. No. 62-142.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 60 C.J.S. Motor Vehicles § 100.

## 66-3-7.1. Registration if vehicle emission inspection test required; requiring a certificate; registration in class A counties.

A. No vehicle required by county or municipal ordinance to pass a vehicle emission inspection test shall be registered with the division until such time as a valid vehicle emission inspection certificate is presented, unless the ordinance of the municipality or county specifically excludes enforcement by the division. The provisions of this section shall apply to a class A county or municipality within a class A county that has a vehicle emission inspection program, and the provisions of this section may apply to a municipality in an adjoining or contiguous county to a class A county that adopts a vehicle emission inspection program. Any municipality may adopt a voluntary or mandatory vehicle emission inspection program by ordinance. The ordinance may exempt or exclude certain categories or classifications of vehicles and may exempt or exclude a vehicle because of age or type of vehicle.

B. It shall be a misdemeanor for any person to register a vehicle in a county or municipality which does not conduct a vehicle emission testing program if the registered owner of that vehicle resides in a county or municipality conducting a vehicle emissions inspection program and the person registering the vehicle does so for the purpose of evading a vehicle emissions inspection program.

**History:** Laws 1988, ch. 103, § 1; 1995, ch. 127, § 2.

**ANNOTATIONS**

**The 1995 amendment,** effective June 16, 1995, substituted the current section heading for "Registration in class A counties; requiring a certificate"; designated the subsections; in Subsection A, in the first sentence, deleted "motor vehicle" preceding "division", deleted "of the taxation and revenue department" preceding "until", inserted ", unless the ordinance of the municipality or county specifically excludes enforcement by the division", and added the second through fourth sentences.

## 66-3-8. Examination of registration records and index of stolen and recovered vehicles.

The department, upon receiving application for original registration of a vehicle or a certificate of title, except a title issued on a manufactured home, shall first check the engine or other standard identification number provided by the manufacturer of the vehicle shown in the application against its own records, the records of the national crime information center and other records as appropriate.

**History:** 1953 Comp., § 64-3-8, enacted by Laws 1978, ch. 35, § 28; 1995, ch. 135, § 9; 2004, ch. 59, § 6.

**ANNOTATIONS**

**The 2004 amendment,** effective March 4, 2004, added "except a title issued on a manufactured home" after "certificate of title".

**The 1995 amendment,** effective June 16, 1995, substituted "department" for "division" at the beginning, substituted the language beginning "its own records" at the end for references to two indexes required by the Motor Vehicle Code, and made a minor stylistic change.

## 66-3-9. Registration indexes.

The department shall file each application received for registration of a vehicle. When satisfied as to the genuineness and regularity of the application and that the applicant is entitled to register the vehicle and to the issuance of a certificate of title, the department shall register the vehicle described and keep a suitable record thereof.

**History:** 1953 Comp., § 64-3-9, enacted by Laws 1978, ch. 35, § 29; 1995, ch. 135, § 10.

**ANNOTATIONS**

**The 1995 amendment,** effective June 16, 1995, deleted former Subsections A through D providing the ways to keep a suitable record, and rewrote the remainder of the section.

## 66-3-10. Department to issue certificate of title, evidence of registration, registration plate and validation sticker; release of lien; odometer statement.

A. The department, upon registration of a vehicle, shall issue a certificate of title and evidence of registration; an odometer statement may appear on one or both of these documents.

B. Except for certificates of title issued pursuant to Section 66-3-2, 66-3-27 or 66-3-423 NMSA 1978 and for manufactured homes, school buses, state government vehicles, motorcycles and off-highway motor vehicles, upon issuance of a new certificate of title or upon transfer of a certificate of title, the department shall issue a registration plate and a validation sticker to the owner of the vehicle.

C. The registration evidence shall be delivered to the owner and shall contain upon its face the date issued, the name and address of the owner, the registration number assigned to the owner and such description of the vehicle registered to the owner as determined by the secretary.

D. The certificate of title shall contain the identical information required on the registration evidence and in addition a statement of the owner's title and of all liens and encumbrances upon the vehicle.

E. The certificate of title shall contain a space for the release of any lien, space for assignment of title or interest and warranty by the owner and space for notation of liens and encumbrances upon the vehicle at the time of transfer.

F. The certificate of title shall be delivered to the owner in the event no lien or encumbrances appear thereon, otherwise the certificate of title shall be delivered to the person named to receive it in the application for certificate.

G. Whenever the owner of a vehicle subject to registration transfers the person's title or interest in the vehicle to a nonresident who desires to title the vehicle in the state of the nonresident's residence, the department upon receiving application and the payment of the proper fee shall issue a certificate of title only and record on the certificate all liens and encumbrances.

**History:** 1953 Comp., § 64-3-10, enacted by Laws 1978, ch. 35, § 30; 1981, ch. 361, § 5; 1989, ch. 318, § 5; 2020, ch. 39, § 2.

## ANNOTATIONS

**Cross references.** — For registration of off-highway motorcycles, *see* 66-3-1003 NMSA 1978.

**The 2020 amendment,** effective January 1, 2021, required registration plate and validation sticker issuance upon transfer of motor vehicle ownership; in the section heading, changed "Division" to "Department", and added "registration plate and validation sticker"; in Subsection A, replaced "division" with "department"; added a new Subsection B and redesignated the succeeding subsections accordingly; in Subsection C, after "determined by the", deleted "director" and added "secretary"; and in Subsection G, after "residence, the", deleted "division" and added "department".

**The 1989 amendment,** effective July 1, 1989, in Subsection C substituted "contain the identical information required on the" for "contain upon the face thereof the identical information required upon the face of the", and deleted the former second sentence which read: "Said certificate shall bear therein the seal of the division"; in Subsection D deleted "upon the reverse side" following "contain" and deleted "appearing upon the face thereof and" following "lien"; and made minor stylistic changes throughout the section.

**Evidence of ownership.** — The title transfer provisions of the Motor Vehicle Code are not to be interpreted as providing an exclusive method for transferring title. This conclusion is strongly supported by the provision (Section 64-3-10, 1953 Comp., similar to Section 66-3-12 NMSA 1978) that the certificate of title is prima facie evidence of ownership. Such language clearly indicates an intention that the certificate of title is only evidence of ownership and that the same may be shown by other proof. *Schall v. Mondragon*, 1964-NMSC-107, 74 N.M. 348, 393 P.2d 457; *Clovis Fin. Co. v. Sides*, 1963-NMSC-065, 72 N.M. 17, 380 P.2d 173.

**When title passes.** — Since New Mexico does not require an exclusive or mandatory method of transferring title to an automobile, it therefore follows that title and ownership pass when the parties intend it to pass. *Schall v. Mondragon*, 1964-NMSC-107, 74 N.M. 348, 393 P.2d 457.

**Fees paid need not be shown on owner's copy.** — There is no statutory requirement that the fees paid be shown upon the owner's copy of the registration certificate. There is a blank on the registration certificate for filling in such information but it is discretionary with the agent or employee issuing the registration certificate as to whether or not this information will be furnished on the certificate itself. The commissioner (now secretary) does have a regulation promulgated to the effect that on request by any applicant for registration and certificate of title, a separate receipt will be furnished him showing the amount of fees paid. 1960 Op. Att'y Gen. No. 60-76.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 26, 54.

Liability of state, in issuing automobile certificate of title, for failure to discover title defect, 28 A.L.R.4th 184.

60 C.J.S. Motor Vehicles §§ 42, 105, 106.

## 66-3-10.1. Salvage vehicles; nonrepairable vehicles; certificate of title; transfer of ownership.

A. It is unlawful for a person to sell or otherwise convey ownership of a salvage or nonrepairable vehicle unless the certificate of title or ownership is branded or a comparable title, certificate or ownership document has been issued by another state or jurisdiction.

B. An owner of a nonrepairable vehicle shall sell or otherwise convey that vehicle only to a licensed wrecker of vehicles or a person licensed by a jurisdiction outside of this state to process vehicles by dismantling, wrecking, shredding, crushing or selling motor vehicle parts or scrap material or otherwise disposing of motor vehicles.

C. A nonrepairable vehicle shall not be repaired, reconstructed or restored for operation on the roads or highways of this state.

D. This section does not apply to:

(1) a person whose motor vehicle has been stolen or taken without that person's consent unless, if the motor vehicle is recovered, it is a salvage or nonrepairable vehicle; or

(2) a person conveying ownership of a motor vehicle to an insurance company as a result of a total loss insurance settlement. For the purpose of this paragraph, "total loss insurance settlement" means the transfer of ownership of a motor vehicle by a person to an insurance company as a result of a settlement in which the motor vehicle is determined to be salvage or nonrepairable.

**History:** 1978 Comp., § 66-3-10.1, enacted by Laws 1990, ch. 120, § 24; 2005, ch. 324, § 8.

**ANNOTATIONS**

**Repeal and reenactments.** — Laws 2005, ch. 324, § 8, effective January 1, 2006, repealed former 66-3-10.1 NMSA 1978 as enacted by Laws 1990, ch. 120, § 24, and enacted the section set forth above.

Pursuant to 12-2A-14 NMSA 1978, it has been considered a continuation of the former section relating to salvage vehicle certificates of title.

## 66-3-11. Director may authorize issuance of nonnegotiable certificates of title.

Any owner of a vehicle required to be registered under the provisions of Section 66-3-1 NMSA 1978, who is unable to comply with the registration requirements of Section 66-3-4 NMSA 1978 for the reason that the vehicle is registered and titled in another state, territory or possession of the United States, subject to a lien, and the original title thereof cannot be obtained from the lien holder, shall make application to the division for the registration and issuance of a nonnegotiable certificate of title. Application for a nonnegotiable certificate of title shall be made upon written forms prescribed by the director and upon the approval of the director a nonnegotiable certificate of title shall be issued by the division with the words **"NONNEGOTIABLE AND NONTRANSFERABLE"** clearly marked in bold letters on its face.

**History:** 1953 Comp., § 64-3-11, enacted by Laws 1978, ch. 35, § 31.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Liability of state, in issuing automobile certificate of title, for failure to discover title defect, 28 A.L.R.4th 184.

## 66-3-12. Evidential value of certificate.

A certificate of title issued by the division shall be received in evidence as prima facie evidence of the ownership of the vehicle named in the certificate and as prima facie evidence of all liens and encumbrances against said vehicle appearing on the certificate.

**History:** 1953 Comp., § 64-3-12, enacted by Laws 1978, ch. 35, § 32.

**ANNOTATIONS**

**Being "record" owner.** — The fact that plaintiff's son was the "record" owner of the car at the time of the collision was prima facie evidence of ownership, and the appellate court was thereby precluded from overturning the finding of plaintiff's son's ownership of the car as being without support in the evidence. *Forsythe v. Cent. Mut. Ins. Co.*, 1973-NMSC-001, 84 N.M. 461, 505 P.2d 56.

**Certificate of title was prima facie evidence of ownership** of automobile, and of the lien of the bank, until that was discharged. *Wray v. Pennington*, 1956-NMSC-120, 62 N.M. 203, 307 P.2d 536.

**Evidential effect given no matter who claims ownership.** — Title provisions of Motor Vehicle Code provide for certificates of title and state that they shall be prima facie evidence of ownership. When ownership is an issue, whether between opposing claimants of title or between father and child, there is no reason for denying the certificate the effect clearly directed by the legislature. *Cortez v. Martinez*, 1968-NMSC-153, 79 N.M. 506, 445 P.2d 383, *overruled on other grounds by McGeehan v. Bunch*, 1975-NMSC-055, 88 N.M. 308, 540 P.2d 238.

**Certificate of title is only prima facie evidence** of ownership under Section 64-3-10, 1953 Comp. (similar to this section) and true ownership may be shown by other proof. *Western States Collection Co. v. Marable*, 1968-NMSC-020, 78 N.M. 731, 437 P.2d 1000.

**Title may be shown by other proof.** — The title transfer provisions of the Motor Vehicle Code are not to be interpreted as providing an exclusive method for transferring title. This conclusion is strongly supported by the provision (64-3-10, 1953 Comp., similar to this section) that the certificate of title is prima facie evidence of ownership. Such language clearly indicates an intention that the certificate of title is only evidence

of ownership and that the same may be shown by other proof. *Schall v. Mondragon*, 1964-NMSC-107, 74 N.M. 348, 393 P.2d 457; *Clovis Fin. Co. v. Sides*, 1963-NMSC-065, 72 N.M. 17, 380 P.2d 173.

**Parent presumed to be owner.** — This section creates a presumption that the owner listed in the certificate of title to an automobile, who is also the parent of a driver involved in an accident, is, in fact, the real owner. It is then necessary for the factfinder to determine for purposes of a negligence suit against the parent under the Family Purpose Doctrine, whether the presumption is rebutted by counter evidence. *Shryock v. Madrid*, 1987-NMCA-083, 106 N.M. 589, 746 P.2d 1121, *rev'd on other grounds*, 1987-NMSC-106, 106 N.M. 467, 745 P.2d 375.

**Prima facie evidence of minor's co-ownership.** — Where title to an automobile was in the names of three persons, although one was a minor, the fact that she was a record owner of the automobile was prima facie evidence of her co-ownership of the automobile. *Lee v. Gen. Accident Ins. Co.*, 1987-NMSC-047, 106 N.M. 22, 738 P.2d 516.

**Evidence contrary to record title does not rebut presumption of ownership.** *Fernandez v. Ford Motor Co.*, 1994-NMCA-063, 118 N.M. 100, 879 P.2d 101, cert. denied, 118 N.M. 90, 879 P.2d 91.

**When title passes.** — Since New Mexico does not require an exclusive or mandatory method of transferring title to an automobile, it therefore follows that title and ownership pass when the parties intend it to pass. *Schall v. Mondragon*, 1964-NMSC-107, 74 N.M. 348, 393 P.2d 457.

## 66-3-13. Evidence of registration to be signed and exhibited on demand.

A. Every owner, upon receipt of registration evidence, shall write that owner's signature thereon in a space provided. Every such registration evidence or duplicate of registration evidence validated by the division shall be exhibited upon demand of any police officer.

B. A person charged with violating the provisions of this section shall not be convicted if the person produces, in court, evidence of a signed registration valid at the time of issuance of the citation.

**History:** 1953 Comp., § 64-3-13, enacted by Laws 1978, ch. 35, § 33; 2013, ch. 204, § 2.

**ANNOTATIONS**

**Cross references.** — For requirement that license be carried and exhibited on demand, *see* 66-5-16 NMSA 1978.

**The 2013 amendment,** effective July 1, 2013, provided that a person cited for no registration shall not be convicted if the person produces evidence of compliance in court; in Subsection A, in the second sentence, after "evidence or duplicate", deleted "thereof" and added "of registration evidence"; and added Subsection B.

**Stops for safety reasons.** — Under Sections 66-2-12A(3), 66-3-13, and 66-5-16 NMSA 1978, a law enforcement officer is permitted to ask for a driver's license, registration, and proof of insurance once an officer stops an automobile for safety reasons. Those statutes are consistent with the constitutional protections against unreasonable searches and seizures afforded by the Fourth Amendment of the U.S. Constitution and N.M. Const., art. II, § 10. *State v. Reynolds*, 1995-NMSC-008, 119 N.M. 383, 890 P.2d 1315.

**Section does not authorize random detention based on hunches.** — Sections 64-3-11 and 64-13-49, 1953 Comp. (similar to this provision and 66-5-16 NMSA 1978 respectively) grant the police the unquestioned good faith right to detain motor vehicles for the purpose specified, but when the detention becomes an excuse for some other purpose which would not be lawful, the actions then become unreasonable. The sections do not nor cannot authorize a random selection of motorists based on a "hunch" or a "guesstimate" that some law has been broken, as such would violate minimum federal constitutional standards. *State v. Ruud*, 1977-NMCA-072, 90 N.M. 647, 567 P.2d 496.

**Random and routine check not unconstitutional.** — There is no violation of constitutional standards where a state police officer in New Mexico stops the driver of a motor vehicle for the purpose of making a routine check of driver's license and vehicle registration on a random, or arbitrary basis, i.e., the officer having no reasonable suspicion that any law had been broken. *United States v. Jenkins*, 528 F.2d 713 (10th Cir. 1975), *but see Delaware v. Prouse*, 440 U.S. 648, 99 S. Ct. 1391, 59 L. Ed. 2d 660 (1979).

**Demanding proof of registration and display of license lawful.** — Demanding proof of registration of the vehicle and the displayment of the driver's license were a lawful and necessary carrying out of the New Mexico statutes regulating motor vehicles and were not violative of minimum federal constitutional standards. *United States v. Lepinski*, 460 F.2d 234 (10th Cir. 1972).

**Detention unlawful when it becomes mere subterfuge for another purpose.** — In conducting general license and registration checks under Sections 64-3-11 and 64-13-49, 1953 Comp. (similar to this section and Section 66-5-16 NMSA 1978, respectively) the actions of the police must be in conformity with the constitutional requirements of the U.S. Const., amend. IV; and when the detention permitted by the statute becomes a mere subterfuge or excuse for some other purpose which would not be lawful the actions then become unreasonable and fail to meet the constitutional requirement. *State v. Bloom*, 1976-NMCA-035, 90 N.M. 226, 561 P.2d 925, *rev'd on other grounds*, 1977-

NMSC-016, 90 N.M. 192, 561 P.2d 465 (defendants were lawfully stopped and checked).

**When occupants "conspicuous" temporary detaining permissible.** — Temporarily detaining driver and the occupants of a vehicle for the purpose of a license and registration check was justified where the individuals and the vehicle were conspicuous, the occupants were young, and the car was a new and very expensive one, and there was no proof of registration or ownership. *United States v. Fallon*, 457 F.2d 15 (10th Cir. 1972).

**Suspicious behavior allowed to prompt legal check.** — A police officer was reasonably investigating the suspicious behavior of the defendants, who had driven into a shopping center's parking area, parked and were looking into parked cars, at license plates and into windows. After identifying himself, the defendants willingly accompanied the officer to the parking lot. This does not show that an arrest occurred. At the lot, the defendants were unable to produce their car's registration and were cited for violation of the statute. The officer requested they go with him to the station house while the car could be checked out. Defendants did not object. Upon report that the car was stolen, a lawful arrest was promptly made. The officers properly carried out a legitimate investigative function which did not destroy the admissibility of the evidence obtained. *United States v. Self*, 410 F.2d 984 (10th Cir. 1969).

**Nonresident may be required to show vehicle "duly registered".** — Under a systematic check of the registration of all motor vehicles being operated on New Mexico roads, resident motorists can be required to show proof of registration under Section 64-3-11, 1953 Comp. (similar to this section) and a nonresident motorist can be required to show proof that his out-of-state vehicle is "duly registered in" some foreign state as is required under Section 64-6-1A, 1953 Comp. (similar to Section 66-3-301 NMSA 1978). In conducting such checks of vehicle registration an officer can detain a nonresident motorist for a brief time on the road to determine whether his vehicle is "duly registered in" the foreign state. 1966 Op. Att'y Gen. No. 66-62.

**Check cannot be used as pretext for search.** — The systematic check of registration of motor vehicles may not be used merely as a pretext for searching vehicles. The purpose of the check must be for a good faith examination of the driver's license or vehicle registration. 1966 Op. Att'y Gen. No. 66-62.

**Am. Jur. 2d A.L.R. and C.J.S. references.** — Validity and construction of statute making it a criminal offense for the operator of a motor vehicle not to carry or display his operator's license or the vehicle registration certificate, 6 A.L.R.3d 506.

Validity of routine roadblock by state or local policy for purposes of discovery of driver’s license, registration, and safety violations. 116 A.L.R.5th 479.

Authority of public official, whose duties or functions generally do not entail traffic stops, to effectuate traffic stop of vehicle. 18 A.L.R. 6th 519.

## 66-3-14. Registration plates or validating stickers to be furnished by department; reflective material.

A. The department upon registering a vehicle shall issue a registration plate or a validating sticker to the owner of the vehicle. The validating sticker may be designed and required to be placed on the registration plate or elsewhere on the vehicle as prescribed by the department.

B. Each registration plate shall have a background of reflective material such that the registration number assigned to the vehicle is plainly legible from a distance of one hundred feet at night. The colors shall include those of the state flag, except prestige and special plates.

C. Each registration plate shall have displayed upon it:

(1) the registration number assigned to the person to whom it was issued; and

(2) the name of this state.

D. The department shall issue no registration plates for privately owned vehicles that contain the words "staff officer" or any other title except as otherwise provided by law.

E. All registration plates for private vehicles shall be alike in form except for the owner's registration number. The department shall adopt registration number systems for registration plates.

F. In lieu of or in addition to a registration plate or sticker for commercial motor vehicles, the department may issue an electronic identifying device.

**History:** 1953 Comp., § 64-3-14, enacted by Laws 1978, ch. 35, § 34; 1981, ch. 361, § 6; 1990, ch. 107, § 1; 1995, ch. 135, § 11.

**ANNOTATIONS**

**Cross references.** — For special registration plates generally, *see* 66-3-401 NMSA 1978 et seq.

For special plates for congressmen, *see* 66-3-405 NMSA 1978.

For special plates for radio station licensees, *see* 66-3-417 NMSA 1978.

**The 1995 amendment,** effective June 16, 1995, substituted "department" for "division" throughout the section; in the section heading, deleted "county designation; appropriation" following "material"; in Subsection A, rewrote the last sentence which previously read: "The decision to issue a plate or a validating sticker shall be made by

the director"; deleted former Subsections B through E, relating to license plate replacement procedures and fees; redesignated Subsections G through J as Subsections B through E; in Subsection B, deleted "Beginning in 1978, as new plates are issued" preceding "The colors"; in Subsection C, made minor stylistic changes and deleted Paragraph (3) requiring the license plate to display the county name; in Subsection E, deleted "and the county indication" at the end of the first sentence; and added Subsection F.

**The 1990 amendment,** effective March 5, 1990, designated the former third and fourth sentences of Subsection A as Subsection G; added present Subsections B to F; in Subsection G, substituted "is plainly legible" for "shall be plainly legible" in the first sentence and "colors shall include" for "colors shall be" in the second sentence; and redesignated former Subsections C to E as present Subsections H to J.

**"Lieutenant-governor's aide" or "advisor" cannot be put on plate.** — The department of motor vehicles (now motor vehicle division) may not issue a license plate having on it "lieutenant-governor's aide" or "lieutenant-governor's advisor." 1967 Op. Att'y Gen. No. 67-114.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 54.

Improper use of automobile license plates as affecting liability or right to recover for injuries, death or damages in consequence of automobile accident, 99 A.L.R.2d 904.

60 C.J.S. Motor Vehicles §§ 105 to 108.

## 66-3-14.1. County name stickers.

The department shall make available, upon request, county name stickers or decals for purchase at a reasonable charge to be set by the secretary. The stickers or decals shall be designed and prescribed by the department to fit on a registration plate without obscuring the registration number or validating sticker.

**History:** Laws 2005, ch. 13, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 13 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

## 66-3-15. Special registration plates; procedures; fee.

A. The division shall establish and issue special registration plates, including motorcycle prestige registration plates and shall establish and promulgate procedures for applications for and issuance of special registration plates.

B. For a fee of fifteen dollars ($15.00), which fee shall be in addition to the regular motor vehicle registration fees, any owner of a motor vehicle may apply for the issuance of a special registration plate as defined in Subsection A of this section. No two owners will be issued identically lettered or numbered plates.

C. An owner must make a new application and pay a new fee each year he desires to obtain a special registration plate; however, he will have first priority on that plate for each subsequent year that he makes timely and appropriate application.

D. All fees collected shall be paid to the state treasurer to the credit of the motor vehicle suspense fund with distribution in accordance with Section 66-6-23 NMSA 1978.

**History:** 1953 Comp., § 64-3-15, enacted by Laws 1978, ch. 35, § 35; 1985, ch. 148, § 1; 1986, ch. 45, § 1.

**ANNOTATIONS**

**Cross references.** — For special plates, *see* 66-3-401 NMSA 1978 et seq.

**"Lieutenant-governor's aide" or "advisor" cannot be put on plate.** — The department of motor vehicles (now motor vehicle division) may not issue a license plate having on it "lieutenant-governor's aide" or "lieutenant-governor's advisor." 1967 Op. Att'y Gen. No. 67-114.

## 66-3-15.1. Repealed.

**History:** Laws 2001, ch. 180, § 1; repealed by Laws 2007, ch. 319, § 67.

**ANNOTATIONS**

**Repeals.** — Laws 2007, ch. 319, § 67 repealed 66-3-15.1 NMSA 1978, as enacted by Laws 2001, ch. 180, § 1, relating to special motorcycle registration plates for disabled persons, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com.*

## 66-3-16. Distinctive registration plates; persons with significant mobility limitation; parking placard.

A. The division shall issue distinctive registration plates for use on motor vehicles and motorcycles owned or leased by a person with a significant mobility limitation who requests a distinctive registration plate and who proves satisfactorily to the division that the person is a person with a significant mobility limitation.

B. The division shall issue a distinctive parking placard to an organization that owns or leases a motor vehicle that primarily transports persons with significant mobility limitations and that requests a distinctive parking placard. The organization, if qualified, may obtain a distinctive parking placard for each vehicle used to transport persons with significant mobility limitations.

C. No fee in addition to the regular registration fee, if any, applicable to the motor vehicle or motorcycle shall be collected for issuance of distinctive registration plates or parking placards pursuant to this section.

D. No person shall falsely claim to have a significant mobility limitation so as to be eligible to be issued a distinctive registration plate or a parking placard pursuant to this section when the person does not in fact have a significant mobility limitation. Upon notice and opportunity to be heard, the division may revoke and demand return of any placard when:

(1) it was issued in error or with false information;

(2) the person receiving the placard is no longer eligible;

(3) the placard is being used by ineligible persons; or

(4) the organization to which the parking placard was issued no longer exists.

E. Upon written application to the division accompanied by a medical statement by a licensed physician or a physician assistant, advanced practice registered nurse or certified nurse-midwife working within that person's scope of practice attesting to the permanent significant mobility limitation, a resident of the state who has a significant mobility limitation, as provided in this section, may apply for and be issued no more than two parking placards for display upon a motor vehicle registered to the person or motor vehicle owned by another person who is transporting the person with a significant mobility limitation. The licensed physician or the physician assistant, advanced practice registered nurse or certified nurse-midwife working within that person's scope of practice shall provide the division all information and records necessary to issue a permanent parking placard. Once approved for use of a permanent parking placard, a person with a significant mobility limitation shall not be required to furnish further medical information.

F. To obtain a distinctive parking placard pursuant to this section, an organization shall submit to the division:

(1) on a form approved by the division, a signed statement by an authorized officer of the organization affirming that the vehicle will be primarily used to transport persons with significant mobility limitations and that the registered vehicle is owned or leased by the organization; and

(2) at least one contract that places the organization under obligation to provide transportation services to persons with significant mobility limitations.

G. A parking placard issued pursuant to this section shall expire four years from the date it was issued.

H. The division shall issue two-sided hanger-style parking placards with the following characteristics:

(1) a picture of the international symbol of access;

(2) a hologram to make duplication difficult;

(3) an imprinted expiration date; and

(4) for a placard issued to:

(a) a person with a significant mobility limitation, a full-face photograph of the holder on the inside of the placard covered by a flap; or

(b) an organization, the number of the registration plate issued to the vehicle that is registered or leased to the organization on which the placard will be used.

I. The division shall consult with the governor's commission on disability for continued issuance and format of the placard.

J. The division may issue an identification card containing a full-face photograph of the holder of the registration plate or parking placard and the number of the registration plate or parking placard issued to that person.

K. Upon written application to the division accompanied by a medical statement from a licensed physician or a physician assistant, advanced practice registered nurse or certified nurse-midwife working within that person's scope of practice attesting to a temporary significant mobility limitation, a person may be issued a temporary placard for no more than one year. The licensed physician or the physician assistant, advanced practice registered nurse or certified nurse-midwife working within that person's scope of practice shall provide the division all information and records necessary to issue a temporary placard.

L. Registration plates or parking placards issued to a person with a significant mobility limitation by another state or foreign jurisdiction shall be honored until the motor vehicle or motorcycle is registered or the parking placard holder establishes residency in this state.

M. A "person with a significant mobility limitation" means a person who:

(1) cannot walk one hundred feet without stopping to rest;

(2) cannot walk without the use of a brace, cane or crutch or without assistance from another person, a prosthetic device, a wheelchair or other assistive device;

(3) is restricted by lung disease to such an extent that the person's forced respiratory volume, when exhaling for one second, when measured by spirometry, is less than one liter or the arterial oxygen tension is less than sixty millimeters on room air at rest;

(4) uses portable oxygen;

(5) has a severe cardiac condition; or

(6) is so severely limited in the ability to walk due to an arthritic, neurologic or orthopedic condition that the person cannot ascend or descend more than ten stair steps.

**History:** 1953 Comp., § 64-3-16, enacted by Laws 1978, ch. 35, § 36; 1989, ch. 318, § 6; 1995, ch. 129, § 1; 1999, ch. 297, § 7; 2007, ch. 319, § 1; 2010, ch. 74, § 3; 2015, ch. 116, § 15; 2019, ch. 34, § 1.

## ANNOTATIONS

**Cross references.** — For special plates for private vehicles with respect to disabled persons, *see* 66-3-406 NMSA 1978.

For parking privilege for passenger motor vehicle of disabled person, *see* 3-51-46 NMSA 1978.

**The 2019 amendment,** effective July 1, 2019, required the motor vehicle division to issue special distinctive registration placards, upon request, to an organization that owns or leases a vehicle that primarily transports persons with a significant mobility limitation; in the section heading, added "placards"; in Subsection A, after "motorcycles owned", added "or leased", and after "the division that the person", deleted "meets the standard provided in Subsection J of this section" and added "is a person with a significant mobility limitation"; added a new Subsection B, added new subsection designation "C", and redesignated former Subsections B and C as Subsections D and E, respectively; in Subsection C, after "registration plates", added "or parking placards"; in Subsection D, added Paragraph D(4); in Subsection E, after "The", added "licensed"; added a new Subsection F and redesignated former Subsections D through J as Subsections G through M, respectively; in Subsection H, Paragraph H(4), added "for a placard issued to", added subparagraph designation "(a)", in Subparagraph H(4)(a), added "a person with a significant mobility limitation", and added Subparagraph H(4)(b); and in Subsection K, after "The", added "licensed".

**The 2015 amendment,** effective June 19, 2015, included other health care professionals with each reference to a licensed physician to attest to an individual's permanent significant mobility limitation when the individual is applying for a "significant mobility limitation" parking placard; in Subsection C, after "licensed physician", added "or a physician assistant, advanced practice registered nurse or certified nurse-midwife working within that person's scope of practice", and after "The physician", added "or the physician assistant, advanced practice registered nurse or certified nurse-midwife working within that person's scope of practice"; and in Subsection H, after "licensed physician", added "or a physician assistant, advanced practice registered nurse or certified nurse-midwife working within that person's scope of practice", and after "The physician", added "or a physician assistant, advanced practice registered nurse or certified nurse-midwife working within that person's scope of practice".

**Temporary provisions.** — Laws 2015, ch. 116, § 16 provided that by January 1, 2016, every cabinet secretary, agency head and head of a political subdivision of the state shall update rules requiring an examination by, a certificate from or a statement of a licensed physician to also accept such examination, certificate or statement from an advanced practice registered nurse, certified nurse-midwife or physician assistant working within that person's scope of practice.

**The 2010 amendment,** effective May 19, 2010, in Subsection A, in the first sentence after "Subsection", deleted "I" and added "J"; and in Subsection D, after "section shall expire", deleted "on the same date the person's license or identification card issued pursuant to Section 66-5-401 NMSA 1978 expires" and added the remainder of the sentence.

**The 2007 amendment,** effective June 15, 2007, authorized the division to issue distinctive plates for motor vehicles and motorcycles owned by a person with significant mobility limitation if the person meets the standard of Subsection I; changed "disability" to "significant mobility limitation"; rewrote Paragraphs (2) through (4) of Subsection E; added Subsections F, G and J; and relettered Subsection F as Subsection H.

**The 1999 amendment,** effective June 18, 1999, rewrote this section to the extent that a detailed comparison is impracticable.

**The 1995 amendment,** effective July 1, 1995, substituted "disabled" for "so handicapped" in two places in the first sentence and added the remaining provisions in Subsection B, rewrote Subsection C, added Subsections D through G and I, redesignated former Subsection D as Subsection H, and in Subsection H, substituted "disabled person" for "handicapped" and "disabled operator" for "handicapped operator".

**The 1989 amendment,** effective July 1, 1989, made minor stylistic changes in the last sentence of Subsection A; inserted "registration" in Subsection B; in Subsection C substituted "deposited in" for "submitted to the state treasurer to be covered into" and

"66-6-23 NMSA 1978" for "64-6-23 NMSA 1953" in the last sentence; and added Subsection D.

## 66-3-16.1. Prohibited acts; penalties.

A. Any person who provides false information in order to acquire, or who assists an unqualified person to acquire, a special registration plate or parking placard as provided in Section 66-3-16 NMSA 1978 is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

B. Any person, other than the person to whom a special registration plate or a parking placard was issued, who in the absence of the holder of the plate or placard, parks in a designated accessible parking space for persons with significant mobility limitation while displaying the plate or placard, is guilty of a misdemeanor and upon conviction shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

C. A special registration plate or parking placard displayed on a vehicle parked in a designated accessible parking space for persons with significant mobility limitation in the absence of the holder of that plate or placard is subject to immediate seizure by a law enforcement official and if seized shall be delivered to the division within seventy-two hours. Failure to surrender the parking placard on demand of a law enforcement officer is a petty misdemeanor and punishable by a fine not to exceed one hundred dollars ($100).

**History:** 1978 Comp., § 66-3-16.1, enacted by Laws 1995, ch. 129, § 2; 1999, ch. 297, § 8; 2007, ch. 319, § 19.

**ANNOTATIONS**

**The 2007 amendment,** effective June 15, 2007, changed "disabled parking space" to "accessible parking space for persons with significant mobility limitation".

**The 1999 amendment,** effective June 18, 1999, substituted the section heading for "Providing false information; penalty", designated the previously undesignated paragraph as Subsection A, and in that subsection substituted "to acquire, a special registration plate or parking placard" for "in acquiring, a special registration plate or special placard", and added Subsections B and C.

## 66-3-17. Registration plate; replacement of plate.

A. Succeeding registration renewals of the registration plate issued under Section 66-3-14 NMSA 1978 shall cause the division to issue a validating sticker only, except as provided in Subsections B and C of this section.

B. The person to whom the plate is issued may, at any time, apply for the issuance of a duplicate or replacement plate, and upon the surrender of the registration plate he then has, along with the payment of a reasonable fee set by the director that will cover the cost of the production and distribution of the plate, the applicant shall be issued a duplicate or replacement plate.

C. Any peace officer may, upon discovering that the registration plate of any vehicle is illegible because of wear or damage or other cause, issue a citation to the owner or operator of the vehicle. The citation shall provide that the owner shall, within thirty days from the date of the citation, apply for and obtain a duplicate or replacement plate from the division.

**History:** 1953 Comp., § 64-3-17, enacted by Laws 1978, ch. 35, § 37; 1981, ch. 361, § 7; 1995, ch. 44, § 1.

**ANNOTATIONS**

**Cross references.** — For penalty for failure to obtain replacement plate, *see* 66-8-10 NMSA 1978.

**The 1995 amendment,** effective July 1, 1995, deleted "annual" following "Succeeding" at the beginning of Subsection A and made minor stylistic changes.

## 66-3-18. Display of registration plates and temporary registration permits; displays prohibited and allowed.

A. The registration plate shall be attached to the rear of the vehicle for which it is issued; however, the registration plate shall be attached to the front of a road tractor or truck tractor. The plate shall be securely fastened at all times in a fixed horizontal position at a height of not less than twelve inches from the ground, measuring from the bottom of the plate. It shall be in a place and position so as to be clearly visible, and it shall be maintained free from foreign material and in a condition to be clearly legible.

B. A demonstration or temporary registration permit shall be firmly affixed to the inside left rear window of the vehicle to which it is issued, unless such display presents a safety hazard or the demonstration or temporary registration permit is not visible or readable from that position, in which case, the demonstration or temporary registration permit shall be displayed in such a manner that it is clearly visible from the rear or left side of the vehicle.

C. No vehicle while being operated on the highways of this state shall have displayed either on the front or the rear of the vehicle any registration plate, including validating sticker, other than one issued or validated for the current registration period by the department or any other licensing authority having jurisdiction over the vehicle. No expired registration plate or validating sticker shall be displayed on the vehicle other

than an expired special registration plate, which may be exhibited on the front of the vehicle.

D. Nothing contained in this section shall be construed as prohibiting the use of a promotional or advertising plate on the front of the vehicle.

E. A violation of a provision of this section is a penalty assessment misdemeanor.

**History:** 1953 Comp., § 64-3-18, enacted by Laws 1978, ch. 35, § 38; 1985, ch. 51, § 1; 1998, ch. 48, § 4; 2005, ch. 16, § 1; 2007, ch. 319, § 20; 2018, ch. 74, § 7.

## ANNOTATIONS

**The 2018 amendment,** effective July 1, 2018, provided that any violation of this section is a penalty assessment misdemeanor; and added Subsection E.

**The 2005 amendment,** effective June 17, 2005, provided that temporary demonstration plates shall be displayed inside the left rear window of the vehicle.

**The 1998 amendment,** effective July 1, 1998, substituted "plates and temporary permits and plates" for "plate" in the section heading; inserted a new Subsection B and redesignated the remaining Subsections accordingly; in present Subsection C, substituted "department" for "division"; and in present Subsection D, deleted "on the front of the vehicle" following "use" and inserted "on the front of the vehicle" at the end of the subsection.

**Subsection A of Section 66-3-18 NMSA 1978 is constitutional and not void for vagueness.** *State v. Jacquez*, 2009-NMCA-124, 147 N.M. 313, 222 P.3d 685, cert. denied, 2009-NMCERT-009, 147 N.M. 421, 224 P.3d 648.

**Subsection A of Section 66-3-18 NMSA 1978 requires that all registration information, including the registration sticker, be clearly visible.** *State v. Jacquez*, 2009-NMCA-124, 147 N.M. 313, 222 P.3d 685, cert. denied, 2009-NMCERT-009, 147 N.M. 421, 224 P.3d 648.

**Traffic stop for obstruction of registration sticker was valid.** — Where a police office stopped defendant because the officer's view of the registration sticker on defendant's license plate was blocked by a frame placed around the plate which prevented the officer from seeing the expiration date of the sticker, the stop was lawful. *State v. Jacquez*, 2009-NMCA-124, 147 N.M. 313, 222 P.3d 685, cert. denied, 2009-NMCERT-009, 147 N.M. 421, 224 P.3d 648.

**Permissible for officer to stop car for violation.** — Legibility and visibility of the registration plate would include legibility and visibility of any renewal sticker; thus, it was proper for police officer to stop the defendant where a trailer hitch blocked the renewal

stickers on the registration plate. *State v. Hill*, 2001-NMCA-094, 131 N.M. 195, 34 P.3d 139.

**Loose, dangling, swinging plates.** — Where license plates were fastened to the car only at one corner of the plates, were loose, dangling and swinging, in violation of Section 64-3-13, 1953 Comp. (similar to this section), the officer, having observed the commission of a criminal offense, was acting within his rights in stopping the car, requiring production of identification of the car and, upon discovering the discrepancies, of taking the car and its driver into town. The development of the information as to the ownership of the car and its unlawful transportation were proper incidents of the search and seizure of the car. *United States v. Bongiorno*, 444 F.2d 120 (10th Cir. 1971).

**Further questioning and search impermissible following license plate stop.** — Where an officer stopped defendant's vehicle because of the lack of a license plate, the officer could lawfully ask for driver documentation, but an additional question about whether defendant had any weapons in the car and the officer's subsequent detention and search were not permissible. *City of Albuquerque v. Haywood (In re Forfeiture of ($28,000))*, 1998-NMCA-029, 124 N.M. 661, 954 P.2d 93, cert. denied, 124 N.M. 589, 953 P.2d 1087.

**No exception is made for vehicles of nonresidents.** *United States v. Bongiorno*, 444 F.2d 120 (10th Cir. 1971).

**Currency of registration plate.** — Law enforcement officer was justified in stopping a vehicle for displaying an expired registration in violation of this section. *United States v. Aguilar*, 301 F.Supp.2d 1263 (D.N.M. 2004).

**Law reviews.** — For comment, "State v. Vandenberg: Lowering the Fourth Amendment Bar While Avoiding the Issue of Pretextual Police Conduct," see 35 N.M. L. Rev. 467 (2005).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 54, 94, 95.

60 C.J.S. Motor Vehicles §§ 105, 106.

## 66-3-19. Renewal of registration; staggered period for vehicles; exception for manufactured homes and freight trailers; late registration.

A. The department, in order to operate a more uniform system of vehicle registration, is authorized for certain or all vehicles to:

(1) prorate registration fees by quarterly increments for periods in excess of twelve months, but not exceeding twenty-four months;

(2) determine the specific registered vehicle owners and the numbers of these to be assigned to each registration period in order to maintain the system;

(3) notify each registered vehicle owner by mail at the last known address within an appropriate period prior to the expiration of the current registration period. The notice shall include a renewal-of-registration application form specifying the amount of registration fees due and the specific dates of the registration period covered by the renewal application;

(4) provide for the retention of registration plates;

(5) provide for the issuance of validating stickers to be affixed either to retained registration plates or elsewhere on the vehicles as prescribed by the department to signify the registration of the vehicles for the current registration period; and

(6) provide for identification purposes clearly recognizable distinctions between current and expired registration plates and validation stickers. To this end, the department, by whatever system or device the secretary may direct that is approved by the chief of the New Mexico state police division of the department of public safety, shall ensure a practicable display of the proper and current registration of vehicles.

B. Certificates of title need not be renewed annually but shall remain valid until canceled by the department for cause or upon transfer of any interest shown in the certificate of title.

C. The vehicle registration of vehicles registered under the provisions of Subsection A of this section expires on the last day of the period for which the vehicle has been registered. Every vehicle registration other than vehicles registered in accordance with Subsection A of this section, manufactured homes and freight trailers expires December 31. The department may receive applications for renewal of registration and may issue new registration evidence and registration plates or validating stickers at any time prior to expiration of the current registration.

D. The registration of a manufactured home or freight trailer need not be renewed annually, and the initial registration shall be effective and considered a current registration for the purpose of the Motor Vehicle Code as long as the ownership of the vehicle is not transferred. The transfer of title provisions of the Motor Vehicle Code do apply to manufactured homes and freight trailers, and the transferee is required to register the vehicle in accordance with Section 66-3-103 NMSA 1978. The department is authorized and directed to issue distinctive registration plates for manufactured homes and freight trailers that identify the plates as permanent registration plates.

E. It is unlawful to operate or transport or cause to be transported upon any highways in this state any vehicle, except a commercial motor vehicle registered in another state or a manufactured home, subject to registration under the provisions of

the Motor Vehicle Code without having paid the registration fee or without having secured and constantly displayed the registration plate required by the Motor Vehicle Code. If a vehicle, other than a manufactured home, is operated or transported after the expiration of the vehicle registration, the owner of the vehicle is subject to a penalty of the greater of ten dollars ($10.00) or, if the vehicle is operated or transported thirty-one or more days after the expiration of the registration, an amount equal to seventy-five percent of the registration fee. Any duly appointed deputy or agent of the department has the authority to seize the vehicle and hold it until the fee, penalty and any fine that may be imposed for violation of law are paid and may sell the vehicle in the manner provided by law for the distraint and sale of personal property.

F. It is unlawful to operate, transport or cause to be transported upon any highways in this state or to maintain in any place in this state a manufactured home subject to registration under the provisions of the Motor Vehicle Code without having paid the registration fee or without having secured and constantly displayed the registration plate required by the Motor Vehicle Code. Violation of this subsection subjects the owner to a penalty of five dollars ($5.00), and no other administrative penalty for failure to register under the Motor Vehicle Code shall be imposed upon manufactured homes that are subject to the provisions of Section 66-6-10 NMSA 1978. Any duly appointed deputy or agent of the department has authority to seize the manufactured home and hold it until the fee, penalties and any fine that may be imposed for violation of law are paid and may sell the manufactured home in the manner provided by law for the distraint and sale of personal property.

G. This section authorizes a staggered system of registration of vehicles.

**History:** 1953 Comp., § 64-3-19, enacted by Laws 1978, ch. 35, § 39; 1981, ch. 361, § 8; 1989, ch. 318, § 7; 1990, ch. 120, § 25; 1993, ch. 328, § 1; 1995, ch. 44, § 2; 1995, ch. 135, § 12.

## ANNOTATIONS

**Cross references.** — For general definitions applicable to this section, *see* 66-1-4 to 66-1-4.20 NMSA 1978.

For giving notice, *see* 66-2-11 NMSA 1978.

For disposition of fees, *see* 66-6-23 NMSA 1978.

**1995 Multiple Amendments.** — Laws 1995, ch. 135, § 12, effective January 1, 1996, and Laws 1995, ch. 44, § 2, effective July 1, 1995, enacted virtually identical amendments to this section that were reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 1995, ch. 135, § 12, as the last act signed by the governor, is set out above and incorporates both amendments. The amendments enacted by Laws 1995, ch. 135, § 12, and Laws 1995, ch. 44, § 2 are described below. To view the session laws in their entirety, *see* the 1995 session laws on *NMOneSource.com*.

The nature of the difference between the amendments is that Laws 1995, ch. 135, § 12, made an exception to the registration requirements for commercial motor vehicles registered in another state and increased the penalty for failing to register a vehicle that is operated or transported on a highway of this state. Laws 1995, ch. 44, § 2, made virtually identical changes and also provided for twenty-four (24) month registration fees.

Laws 1995, ch. 44, § 2, effective July 1, 1995, and Laws 1995, ch. 135, § 12, effective January 1, 1996, in the section heading, deleted "and prorated vehicles" following "trailers"; in Subsection A, redesignated part of Paragraph (4) as Paragraph (5) and rewrote the new paragraph; redesignated former Paragraph (5) as Paragraph (6) and substituted "chief" for "commanding officer"; in Subsection E, inserted "a commercial motor vehicle registered in another state" following "except" and inserted the language beginning "the greater" at the end of the second sentence; and made minor stylistic changes throughout the section.

**The 1993 amendment,** effective July 1, 1993, substituted "department" for "director" near the beginning of Subsection A and in the last sentence of Subsection D; substituted "department" for "division" in Subsection B, the present third sentence of Subsection C, and the last sentence of Subsections E and F; in Subsection C, added the present first sentence, deleted "For vehicles whose registration expires December 31" from the beginning of the present third sentence, and deleted the former last sentence, which read: "Renewals for these vehicles shall be made on or before March 2 of the following year"; in Subsection E, substituted "the owner of the vehicle is subject to a penalty" for "there shall be a charge to the owner" in the second sentence and inserted "penalty" in the last sentence; and deleted "with respect to a manufactured home" after "subsection" in the second sentence of Subsection F.

**The 1990 amendment,** effective July 1, 1990, substituted "manufactured homes" for "mobile homes" in the catchline; in subsection A, inserted "division of the department of public safety" following "state police" in Paragraph (5), and made minor stylistic changes in Paragraphs (3) and (5); and, in Subsection F, deleted the former second sentence relating to the penalty for violation of the subsection with respect to a travel trailer and substituted "manufactured home" for "house trailer" in three places.

**The 1989 amendment,** effective July 1, 1989, substituted "operate" for "establish" in the introductory paragraph of Subsection A; deleted "staggered" following "initial" in Subsection A(1); in Subsection A(2) deleted "staggered" following "each" and substituted "maintain" for "initiate"; made minor stylistic changes in Subsection B; in Subsection C substituted all of the language of the first sentence beginning with "vehicles" for "staggered vehicles, mobile homes and freight trailers shall expire December 31", and deleted the former fourth and fifth sentences which read: "No person shall display a new registration plate or validating sticker, other than staggered vehicles, prior to December 15. Applications for renewal of prorated registration shall be made by December 31 of each year."; substituted "manufactured home" for "mobile home" several times in Subsections D, E and F; in Subsection E substituted the present

second sentence for the former second and third sentences, which read: "If a vehicle, other than a mobile home, is unlawfully operated or transported, there shall be a charge to the owner of one dollar ($1.00) a day beginning from the date of expiration of the vehicle registration. This charge shall not exceed one hundred dollars ($100)."; and deleted "and motor vehicles" at the end of Subsection G.

**Criminal penalties do not exclude section's administrative penalties.** — The criminal penalties prescribed by 64-10-7, 1953 Comp. (similar to 66-8-7 NMSA 1978) do not exclude imposition of the administrative penalties prescribed by 64-3-14, 1953 Comp. (similar to this section). 1961 Op. Att'y Gen. No. 61-72.

**Section's penalties are civil and not "another penalty".** — When 64-10-7, 1953 Comp. (similar to 66-8-7 NMSA 1978) speaks of "another penalty," it means another penalty for the criminal act. Such a penalty must be either a term of imprisonment or a fine payable into the current school fund. The administrative penalties of 64-3-14, 1953 Comp. (similar to this section) do not meet this test. 1961 Op. Att'y Gen. No. 61-72.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 60 C.J.S. Motor Vehicles § 132.

## 66-3-20. Renewal of registration; vehicles registered by declared gross weight.

All motor vehicles registered by declared gross weight, including vehicles subject to the international registration plan or registration under reciprocal agreement with another state, shall be registered with the department on a staggered basis and that registration shall expire at the end of the twelve-month registration period.

**History:** 1953 Comp., § 64-3-20, enacted by Laws 1978, ch. 35, § 40; 1993, ch. 328, § 2; 2015, ch. 9, § 14.

**ANNOTATIONS**

**Cross references.** — For definition of "declared gross weight", *see* 66-1-4.4 NMSA 1978.

For registration by declared gross weight, *see* 66-3-3 NMSA 1978.

**The 2015 amendment,** effective July 1, 2015, provided a new process for the renewal of registrations for motor vehicles registered by declared weight, including vehicles subject to the international registration plan; after "including vehicles subject to", deleted "proportional registration" and added "the international registration plan", after "shall", deleted "register" and added "be registered", and after "the department on a", deleted the remainder of the section and added "staggered basis and that registration shall expire at the end of the twelve-month registration period".

**The 1993 amendment,** effective July 1, 1993, rewrote this section to the extent that a detailed comparison would be impracticable.

## 66-3-20.1. Providing for extended registration periods for certain motor vehicles; credit for unexpired portion of fee.

A. All vehicles, motorcycles or trucks with a declared gross weight of twenty-six thousand pounds or less may be registered for a period of two years; provided the two-year registration period shall begin on the first day of any month and expire on the last day of any month.

B. The fee for a two-year registration shall be twice the fee for a one-year registration.

C. If the owner of a vehicle that is registered for two years sells, transfers or assigns title to or interest in the vehicle within the first year of registration and applies to have the registration number assigned to another vehicle pursuant to Section 66-3-101 NMSA 1978, upon assignment, the person may apply for a refund of one-half of the two-year registration fee.

**History:** Laws 1988, ch. 94, § 1; 1995, ch. 44, § 3; 2001, ch. 141, § 1; 2004, ch. 59, § 7; 2007, ch. 319, § 21.

**ANNOTATIONS**

**The 2007 amendment,** effective June 15, 2007, provided for a two-year registration; eliminates extended registration; prescribed the fee for a two-year registration; provided for a refund of the fee if the vehicle is sold within the first year of registration.

**The 2004 amendment,** effective March 4, 2004, deleted the language in Subsection C providing for no refund of a registration fee and inserted in its place "A refund shall not be permitted for the first year of registration. A refund shall be permitted during the second year of registration for a quarter during which a person applying for the refund did not own the vehicle for which the refund is requested".

**The 2001 amendment,** effective June 15, 2001, inserted "credit for unexpired portion of fee" in the section heading; and added Subsection D.

**The 1995 amendment,** effective July 1, 1995, rewrote the section heading which read "Establishment and implementation of a system providing for registration of certain motor vehicles for a two-year period"; in Subsection A, deleted "On or after July 1, 1989, all" at the beginning, inserted "up to", preceding "two years" and added the proviso; deleted former Subsection B, relating to the method for implementing the biennial registration system; redesignated former Subsection C as Subsection B and rewrote the subsection which read "The fee for a biennial registration shall be twice the fee for a registration for one year"; and added Subsection C.

## 66-3-21. Vehicle exceeding declared gross weight.

A. Except as otherwise provided by law, a vehicle or combination shall not be operated upon the public highways of this state when the gross vehicle weight or gross combination vehicle weight exceeds the declared gross weight. Any person violating the provisions of this section shall be:

(1) assessed a penalty for the lapsed portion of the registration period in an amount equal to the difference between the fee for the declared gross weight and the fee for the gross vehicle weight or gross combination vehicle weight at which the vehicle or combination was weighed; and

(2) required to register the vehicle or combination at the higher declared gross weight in accordance with the weight at the time of the violation for the remainder of the registration period and to pay that fee.

B. Such registration shall not be construed to authorize the movement of loads in violation of the state's size and weight laws.

**History:** 1953 Comp., § 64-3-21, enacted by Laws 1978, ch. 35, § 41; 2007, ch. 319, § 22.

**ANNOTATIONS**

**Cross references.** — For weight and size limitations, *see* 66-7-401 to 66-7-416 NMSA 1978.

**The 2007 amendment,** effective June 15, 2007, changed "combination gross vehicle weight" to "gross combination vehicle weight".

## 66-3-22. Re-registration; change in declared gross weight.

A. Any vehicle or combination registered at a declared gross weight may be re-registered at a higher weight upon payment of the difference between the paid registration fee and the new registration fee. The amount shall be prorated on a quarterly basis, with any fraction of a quarter-year to be considered a full quarter. In no event shall the amount be less than five dollars ($5.00).

B. When a vehicle or combination has been altered, or from which equipment has been removed to meet legal requirements, and thus will not operate at the current declared gross weight, the registrant may apply for a lowering of the declared gross weight. Upon approval, the registrant shall be refunded a sum equal to the difference between the fee paid for the current registration period and the revised registration fee for the same period, multiplied by the fraction of the whole period remaining, calculated on the basis of the number of complete quarter-years remaining after the date of the application for changed registration.

**History:** 1953 Comp., § 64-3-22, enacted by Laws 1978, ch. 35, § 42.

## 66-3-23. Notice of change of address or name.

A. Whenever any person after making application for or obtaining the registration of a vehicle or a certificate of title moves from the address named in the application or shown upon a registration card or certificate of title, he shall, within ten days thereafter, excluding Saturdays, Sundays and legal holidays, notify the division in writing of his old and new addresses or by electronic media pursuant to department regulations.

B. Whenever the name of any person who has made application for or obtained the registration of a vehicle or a certificate of title is changed by marriage or otherwise, the person shall, within ten days, excluding Saturdays, Sundays and legal holidays, make application for a new certificate of title and registration to the division. The division may require such evidence as it deems satisfactory regarding the change of name.

**History:** 1953 Comp., § 64-3-23, enacted by Laws 1978, ch. 35, § 43; 2004, ch. 59, § 8.

**ANNOTATIONS**

**The 2004 amendment,** effective March 4, 2004, added "or by electronic media pursuant to department regulations" at the end of Subsection A and made grammar changes.

**Right to foreclosure notice not forfeited by failure to file address change known to lien claimant.** — Failure to file a change of address in compliance with this section did not forfeit right to lien foreclosure notice under 48-3-13 NMSA 1978 when lien claimant knew of the more recent address. *Phoenix, Inc. v. Galio*, 1984-NMCA-008, 100 N.M. 752, 676 P.2d 829.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 85 to 89.

60 C.J.S. Motor Vehicles § 101.

## 66-3-24. Lost or damaged certificates, registration evidence or plates.

A. In the event any registration evidence or registration plate is lost, mutilated or becomes illegible, the owner or legal representative or successor in interest of the owner of the vehicle for which the registration evidence or registration plate was issued as shown by the records of the division shall immediately make application for and may obtain a duplicate or a new registration under a new registration number as determined to be the most advisable by the division upon the applicant furnishing information satisfactory to the division.

B. In the event any certificate of title is lost, mutilated or becomes illegible, the owner or legal representative or successor in interest of the owner of the boat required to be titled under the provisions of the Boat Act [Chapter 66, Article 12 NMSA 1978] or the vehicle for which the certificate of title was issued as shown by the records of the division shall immediately make application for and may obtain a duplicate upon the applicant furnishing information satisfactory to the division. In the event a lien or encumbrance is filed of record with the division, the division shall require the application for the duplicate certificate of title to be signed by the holder of the lien or encumbrance. Upon issuance of any duplicate certificate of title, the previous certificate last issued is void.

C. In the absence of the regularly required supporting evidence of ownership upon application for certificate of title, registration or transfer of a boat required to be titled under the provisions of the Boat Act or a vehicle, the division may accept an undertaking or surety bond, in an amount double the value of the boat or vehicle, which shall be conditioned to protect the department and all officers and employees of the department and any subsequent purchaser of the boat or vehicle, any person holding or acquiring a lien or security interest on the boat or vehicle or the successor in interest of the purchaser or person against any loss or damage on account of any defect in or undisclosed claim upon the right, title and interest of the applicant or other person in and to the boat or vehicle. The bond shall run to the true owner or the lienholder. The bond shall expire three years after the date it became effective.

**History:** 1953 Comp., § 64-3-24, enacted by Laws 1978, ch. 35, § 44; 1990, ch. 120, § 26; 2007, ch. 319, § 23.

**ANNOTATIONS**

**Cross references.** — For issuance of nonnegotiable certificates of title, *see* 66-3-11 NMSA 1978.

**The 2007 amendment,** effective June 15, 2007, amended Subsection A to eliminate substitute registrations.

**The 1990 amendment,** effective July 1, 1990, inserted "boat required to be titled under the provisions of the Boat Act" in the first sentences of Subsections B and C, substituted "is void" for "shall be void" at the end of the last sentence of Subsection B, inserted "boat or" preceding "vehicle" in three places and substituted "department" for "division" in the first sentence, and made minor stylistic changes throughout the section.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 60 C.J.S. Motor Vehicles §§ 42, 106.

## 66-3-25. Division may assign new identifying number.

The division is authorized to assign a "distinguishing number" to a vehicle, required to be registered under the provisions of the Motor Vehicle Code [66-1-1 NMSA 1978],

whenever the identifying number thereon is destroyed or obliterated. The distinguishing number shall be affixed to the vehicle in a position to be determined by the director. Such vehicle shall be registered under such distinguishing number in lieu of the former identifying number.

**History:** 1953 Comp., § 64-3-25, enacted by Laws 1978, ch. 35, § 45.

## 66-3-26. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1989, ch. 318, § 37 repealed 66-3-26 NMSA 1978, as enacted by Laws 1978, ch. 35, § 46, relating to regulations governing change of engines, effective July 1, 1989.

## 66-3-27. Horseless carriage registration.

A. A motor vehicle at least thirty-five years old owned as a collector's item and used solely for exhibition and educational purposes is a "horseless carriage". On application to the secretary, the owner of the horseless carriage may receive a certificate of title and permanent registration upon:

(1) payment of a fee of ten dollars ($10.00); and

(2) submission of a witnessed bill of sale on the horseless carriage or an affidavit that the vehicle was assembled by the owner from parts of automobiles at least thirty-five years old.

B. Upon approval of the application, the secretary shall issue one five-year registration plate with registration numbers and the words "Horseless Carriage", "Land of Enchantment" and "New Mexico". The plate, bearing no date, shall be attached to the rear of the vehicle.

C. Upon transfer of ownership of a horseless carriage, the new owner shall apply to the secretary for a transfer of title as provided in and subject to the penalties contained in Section 66-3-103 NMSA 1978. The registration plates shall remain with the transferred vehicle.

D. Beginning in 1968 and each five-year period thereafter, every plate shall be revalidated upon application approved by the secretary, accompanied by a fee of five dollars ($5.00). Upon loss of the original registration plate, a duplicate plate may be obtained by the owner upon payment of a fee of ten dollars ($10.00).

E. A person who violates this section is guilty of a penalty assessment misdemeanor.

**History:** 1953 Comp., § 64-3-27, enacted by Laws 1978, ch. 35, § 47; 2018, ch. 74, § 8.

**ANNOTATIONS**

**Cross references.** — For another definition of "horseless carriage", *see* 66-1-4.8 NMSA 1978.

For the penalty for misdemeanors, *see* 66-8-7 NMSA 1978.

For provisions relating to vehicles of historic and special significance, *see* 66-11-1 to 66-11-5 NMSA 1978.

**The 2018 amendment,** effective July 1, 2018, changed all references of "director" to the secretary of taxation and revenue, revised a statutory reference, and reduced the penalty to a penalty assessment misdemeanor any violation of the provisions of this section; replaced each occurrence of "director" of motor vehicles with "secretary" throughout the section; and in Subsection E, after "guilty of a", added "penalty assessment".

## 66-3-28. State government registration plates; issuance approved.

State government registration plates shall be provided to a state agency by the transportation services division of the general services department. As used in this section, "state agency" means a state department, agency, board or commission, including the legislative and judicial branches, but not including public schools and institutions of higher education.

**History:** Laws 1994, ch. 119, § 14; 1995, ch. 161, § 8; 2007, ch. 29, § 9.

**ANNOTATIONS**

**Cross references.** — For the Transportation Services Act, *see* 15-8-1 NMSA 1978 et seq.

**The 2007 amendment,** effective July 1, 2007, deleted the prohibition that state government registration plates not be provided unless approved by the transportation services division, provided that state government registration plates shall be provided by the transportation service division, and deleted the exclusion of the legislative and judicial branches from the definition of a "state agency".

**The 1995 amendment,** effective June 1, 1995, substituted "transportation services" for "motor pool" in the first sentence.

## 66-3-29. Intrastate livestock haulers.

Intrastate livestock haulers shall be subject to all provisions of Chapter 65 NMSA 1978, except for the provisions relating to certificates of convenience and necessity in Sections 65-2-84 through 65-2-86 NMSA 1978 and those relating to rate regulation in Section 65-2-96 NMSA 1978.

**History:** 1978 Comp., § 65-1-25.2, enacted by Laws 1979, ch. 283, § 1; 1992, ch. 106, § 8; recompiled as 1978 Comp., § 66-3-29 by Laws 1998 (1st S.S.), ch. 10, § 10.

**ANNOTATIONS**

**Recompilations.** — Laws 1998 (1st S.S.), ch. 10, § 10, recompiled former 65-1-25.2 NMSA 1978, relating to intrastate livestock haulers, as 66-3-29 NMSA 1978, effective July 1, 1998.

**The 1992 amendment,** effective July 1, 1992, deleted "exempt" at the end of the section catchline; and substituted "Sections 65-2-84 through 65-2-86" for "Section 65-2-7" and "Section 65-2-96" for "Section 65-2-6".

## 66-3-30. School bus registration; renewal.

A. A school district, another public entity or a school bus contractor may register a school bus that it owns on a permanent basis, without the requirement of renewal, at the time the school bus is initially registered with the department and issued a certificate of title or subsequent to initial registration at the next registration renewal date. The registrant shall pay the registration fee provided in Section 66-6-12 NMSA 1978. To implement this subsection, the department shall:

(1) promulgate a rule setting out the information and procedures the department may require to permanently register a school bus; and

(2) create a permanent registration validation sticker and permanent registration certificate for school buses registered pursuant to this subsection.

B. If a school district, another public entity or a school bus contractor does not register a school bus that it owns as provided in Subsection A of this section, it may renew the registration of two or more school buses it owns on a common date of its choosing on an annual basis, with the registration of those buses expiring and requiring renewal on that date. The fee for the registration of school buses is provided in Section 66-6-12 NMSA 1978. To implement this subsection the department shall:

(1) promulgate a rule setting out the information and procedures the department may require to achieve the registration renewal of two or more school buses on a common date; and

(2) prorate the fee for registration of school buses as necessary to achieve the common registration renewal date.

C. Nothing in this section shall prevent a school district or a school bus contractor from registering a school bus that it owns pursuant to another applicable provision of law.

**History:** Laws 2007, ch. 116, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 116, § 3 made this section effective July 1, 2007.

# PART 2
# TRANSFER OF TITLE OR INTEREST

## 66-3-101. Transfer by owner; recordation of mileage of vehicle; use of the plate and registration number on another vehicle.

A. When the owner of a registered vehicle sells, transfers or assigns the owner's title to or interest in, and delivers the possession of, the vehicle to another, the registration of the vehicle shall expire. The previous owner shall notify the division of the sale or transfer giving the date thereof, the name and address of the new owner and such description of the vehicle as may be required in the appropriate form provided for such purpose by the division. In the case of any transfer, including but not limited to a transfer resulting from a sale, lease, gift or auction of any vehicle, the person making the transfer shall sign and shall record on the document evidencing the transfer of the vehicle the actual mileage of the vehicle as indicated by the vehicle's odometer at the time of the transfer.

B. When the owner of a registered vehicle sells, transfers or assigns title to or interest in the vehicle, the owner shall remove the registration plates from the vehicle, except as provided in Subsection C of this section, and either forward the registration plates to the division or its authorized agent to be destroyed or apply to have the plate and the registration number assigned to another vehicle of the same class. The division may assign the plate and registration number to the newly acquired vehicle of the same class only upon payment of the registration fee, if applicable, and only if the application is made in the name of the original registered owner, unless the owner's name has been changed by marriage, divorce or court order.

C. When the owner of a vehicle bearing a current registration plate of a foreign state, territory or country transfers or assigns the owner's title or interest in the vehicle, the foreign registration plate shall be delivered, together with the title to the vehicle and evidence of registration, to the division or its authorized agent at the time application is made for a New Mexico registration plate, except when the assignment or transfer of the title is to a bona fide resident of the foreign state, territory or country in which the vehicle is registered.

D. The registration plate shall not be displayed on the newly acquired vehicle until the registration of the vehicle has been completed and a new registration certificate issued. However, the temporary registration permit issued for the vehicle by the dealer pursuant to the provisions of Section 66-3-6 NMSA 1978 shall be displayed in accordance with Subsection B of Section 66-3-18 NMSA 1978.

**History:** 1953 Comp., § 64-3-101, enacted by Laws 1978, ch. 35, § 48; 1981, ch. 361, § 9; 1995, ch. 44, § 4; 2001, ch. 141, § 2; 2007, ch. 319, § 24.

## ANNOTATIONS

**Cross references.** — For other provisions concerning disposition of license plates after transfer, *see* 66-3-104 NMSA 1978.

For motor vehicle sales financing, *see* 58-19-1 NMSA 1978 et seq.

**The 2007 amendment,** effective June 15, 2007, amended Subsection B to delete the credit of registration fees upon transfer of title; and added Subsection D.

**The 2001 amendment,** effective June 15, 2001, in Subsection B, inserted "apply to" preceding "have the plate", inserted "less a credit amount, if applicable, representing the unexpired portion of the registration fee as provided in Section 66-3-20.1 NMSA 1978", and deleted "and regulations" following "rules".

**The 1995 amendment,** effective July 1, 1995, added "except as provided in Subsection B of this section" at the end of the first sentence in Subsection A; inserted "difference, if any, between the paid registration fee and the new registration fee and the" near the end of Subsection B; and made minor stylistic changes.

**Statutory method of transfer not exclusive.** — The title provisions are not to be interpreted as providing an exclusive method for transferring title. This conclusion is strongly supported by the provision of Section 64-3-10, 1953 Comp. (similar to Section 66-3-12 NMSA 1978) that the certificate of title is prima facie evidence of ownership. Such language clearly indicates an intention that the certificate of title is only evidence of ownership and that the same may be shown by other proof. *Schall v. Mondragon*, 1964-NMSC-107, 74 N.M. 348, 393 P.2d 457; *Clovis Fin. Co. v. Sides*, 1963-NMSC-065, 72 N.M. 17, 380 P.2d 173.

**When title passes.** — Since New Mexico does not require an exclusive or mandatory method of transferring title to an automobile, it therefore follows that title and ownership pass when the parties intend it to pass. *Schall v. Mondragon*, 1964-NMSC-107, 74 N.M. 348, 393 P.2d 457.

**Question of automobile ownership is for jury.** — Question of ownership of automobile in suit on insurance policy is one for the jury, where alleged owner was a part-time salesman for an automobile dealer under an arrangement whereby salesman

was to sell the car or keep it himself, paying off the balance. *Knotts v. Safeco Ins. Co. of Am.*, 1967-NMSC-213, 78 N.M. 395, 432 P.2d 106.

**Transfer of plates.** — The motor vehicle department (now motor vehicle division) may permit the transfer of registration plates from one motor vehicle to another when the registrant purchases or otherwise acquires ownership of a different automobile during license period. 1959 Op. Att'y Gen. No. 59-146.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 30 to 37.

Motor vehicle certificate of title or similar document as, in hands of one other than legal owner, indicia of ownership justifying reliance by subsequent purchaser or mortgagee without actual notice or other interests, 18 A.L.R.2d 813.

Rights of seller of motor vehicle with respect to purchase price or security on failure to comply with laws concerning transfer of title, 58 A.L.R.2d 1351.

60 C.J.S. Motor Vehicles §§ 39, 40.

## 66-3-101.1. Terminal rental adjustment clauses; vehicle leases that are not sales nor create security interests.

Notwithstanding any other provision of law, in the case of motor vehicles or trailers that are leased, except for those motor vehicles or trailers leased for personal, family or household purposes, a lease transaction does not create a sale of or security interest in a motor vehicle or trailer, or transfer ownership to the lessee, merely because the lease contains a terminal rental adjustment clause that provides that the rental price is permitted or required to be adjusted up or down in respect to the amount of money realized upon the sale of the motor vehicle or trailer. Nothing in this section exempts a leaseholder of a motor vehicle or trailer from payment of fees or taxes otherwise required pursuant to New Mexico law.

**History:** Laws 2013, ch. 52, § 1.

**ANNOTATIONS**

**Emergency clauses.** — Laws 2013, ch. 52, § 2 contained an emergency clause and was approved March 28, 2013.

## 66-3-102. Endorsement of assignment and warranty of title.

The owner shall endorse an assignment and warranty of title upon the certificate of title for such vehicle with a statement of all liens or encumbrances thereto, and he shall deliver the certificate of title to the purchaser or transferee at the time of delivering the vehicle.

**History:** 1953 Comp., § 64-3-102, enacted by Laws 1978, ch. 35, § 49.

**ANNOTATIONS**

**Lack of verification not fatal to filing of assignment.** — The division should accept for filing and, if otherwise proper, treat as valid an application for registration or assignment of title though they are not acknowledged or verified, as the case may be. 1962 Op. Att'y Gen. No. 62-142.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 31, 32.

60 C.J.S. Motor Vehicles § 42.

## 66-3-103. New owner to secure transfer of registration and new certificate of title; time period; penalty.

A. Except as otherwise provided by law, the transferee before operating or permitting the operation of the vehicle or boat on a highway or waterway shall present to the division the certificate of registration and the properly assigned certificate of title and shall apply for and obtain a new certificate of title and a new registration for the vehicle.

B. A transferee who fails to apply for transfer of registration and issuance of a new certificate of title within thirty days from the date of transfer is guilty of a penalty assessment misdemeanor.

**History:** 1953 Comp., § 64-3-103, enacted by Laws 1978, ch. 35, § 50; 1989, ch. 318, § 8; 2018, ch. 74, § 9.

**ANNOTATIONS**

**Cross references.** — For horseless carriage registration, *see* 66-3-27 NMSA 1978.

**The 2018 amendment,** effective July 1, 2018, made the failure to comply with the provisions of this section within thirty days from the date of transfer a penalty assessment misdemeanor; and in Subsection B, deleted "Failure" and added "A transferee who fails", after "the date of transfer", deleted "subjects the transferee to a penalty of twenty dollars ($20.00). The penalty shall be collected by the division and shall be in addition to other fees and penalties provided by law" and added "is guilty of a penalty assessment misdemeanor".

**The 1989 amendment,** effective July 1, 1989, substituted "the vehicle or boat on a highway or waterway" for "such vehicle on a highway" in Subsection A, and made minor stylistic changes throughout the section.

**Title provisions not to be interpreted as providing exclusive method** for transferring title. This conclusion is strongly supported by the provision of 64-3-10, 1953 Comp. (similar to 66-3-12 NMSA 1978) that the certificate of title is prima facie evidence of ownership. Such language clearly indicates an intention that the certificate of title is only evidence of ownership and that the same may be shown by other proof. *Schall v. Mondragon*, 1964-NMSC-107, 74 N.M. 348, 393 P.2d 457; *Clovis Fin. Co. v. Sides*, 1963-NMSC-065, 72 N.M. 17, 380 P.2d 173.

**Noncompliance not considered failure of title or breach of warranty.** — The fact that the parties failed to comply with the title provisions would not operate to continue the plaintiff's status as a purchaser indefinitely. The title provisions refer to the duties of the dealer and transferee, but noncompliance therewith cannot be considered a failure of title, fraudulent misrepresentation, or breach of warranty as to freedom from liens on a motor vehicle. *Prince v. National Union Fire Ins. Co.*, 1965-NMSC-073, 75 N.M. 313, 404 P.2d 137.

**Noncompliance does not prevent malfeasant from bringing a suit.** — When bonding company denied liability solely on the ground that since purchaser did not apply to the motor vehicle department (now motor vehicle division) of the state for a title within the time fixed by statute, he was guilty of a violation of a law, a wrong which made him in pari delicto and without standing to maintain suit, the court held that neither equity nor the law requires its suitors to be wholly blameless. *Commercial Ins. Co. v. Watson*, 261 F.2d 143 (10th Cir. 1958).

**When title passes.** — Since New Mexico does not require an exclusive or mandatory method of transferring title to an automobile, it therefore follows that title and ownership pass when the parties intend it to pass. *Schall v. Mondragon*, 1964-NMSC-107, 74 N.M. 348, 393 P.2d 457.

**Incomplete application within time period satisfactory.** — If the person does apply within 15 days (now 30 days) but does not have a completed registration or some defect is within his registration, he has met the requirements and is not subject to the penalty. 1954 Op. Att'y Gen. No. 54-5894.

**Some evidence of title must be submitted** to the motor vehicle division within 15 days (now 30 days) and the mere application without any evidence of title or without a current registration would not be sufficient. 1954 Op. Att'y Gen. No. 54-5894.

## 66-3-104. Use of plate and registration number on another vehicle; transfer of registration.

A. When the owner of a registered vehicle assigns title or interest to the vehicle, the registration of that vehicle expires, unless the vehicle is registered for an extended registration period and the owner applies to have the registration number assigned to another vehicle as provided in Subsection B of this section.

B. When the owner of a registered vehicle assigns title or interest to the vehicle, he shall remove and retain the registration plate from the vehicle and, within thirty days of the transfer, either make application to have the registration number assigned to another vehicle of the same class or forward the plate to the department or its authorized agent to be destroyed. The transfer of the registration plate shall be permitted only if the application for transfer is made in the name of the original registered owner unless the owner's name has been changed by marriage, divorce or court order.

C. The registration plate shall not be displayed upon the newly acquired vehicle until the registration of the vehicle has been completed and a new registration certificate issued. However, the temporary retail-sale permit issued for the vehicle by the dealer pursuant to the provisions of Section 66-3-6 NMSA 1978 may be securely attached to the plate to be transferred and displayed in accordance with Subsection A of Section 66-3-18 NMSA 1978.

**History:** 1953 Comp., § 64-3-104, enacted by Laws 1978, ch. 35, § 51; 1981, ch. 361, § 10; 1995, ch. 44, § 5; 1998, ch. 48, § 5; 2001, ch. 141, § 3.

**ANNOTATIONS**

**Cross references.** — For other provisions dealing with disposition of plates after transfer, *see* 66-3-101 NMSA 1978.

**The 2001 amendment,** effective June 15, 2001, split the former Subsection A into Subsections A and B; inserted the exception at the end of Subsection A; and renumbered former Subsection B as Subsection C.

**The 1998 amendment,** effective July 1, 1998, designated the first paragraph as Subsection A and the second paragraph as Subsection B; in Subsection A, substituted "that" for "the", inserted "and retain" and "within thirty days of the transfer, either shall make application to have the registration number assigned to another vehicle of the same class or", substituted "department" for "division", and deleted "or the owner shall retain the license plate, within the same thirty days, and make application to have the registration number assigned to another vehicle of the same class"; and in Subsection B, inserted the second sentence.

**The 1995 amendment,** effective July 1, 1995, substituted "class" for "type" at the end of the second sentence and made minor stylistic changes.

## 66-3-105. Transfer by operation of law.

A. Whenever the title or interest of an owner in or to a registered vehicle shall pass to another by operation of law, as upon inheritance, bequest, order in bankruptcy or insolvency, execution sale, repossession upon default in performance in the terms of a

lease or executory sales contract, or otherwise than by voluntary transfer, the transferee shall be subject to the provisions of this section.

B. Notice of transfer by operation of law shall be signed by the executor, administrator, receiver, trustee, sheriff or other representative or successor in interest of the owner of the vehicle. The registration certificate and plate shall be delivered to the registered owner upon such notification or shall be removed by the transferee upon repossession, and submitted to the division for cancellation.

C. The transferee, except as provided in Subsection D of this section, shall secure a transfer of registration to himself and a new certificate of title upon proper application and upon presentation of the last certificate of title, if available, and such instruments or documents of authority, or certified copies thereof, as may be sufficient or required by law to evidence or effect a transfer of title or interest in or to chattels in such case.

D. When the transferee does not operate or permit the operation of such vehicle upon the highways, or when the transferee operates such vehicle only for the purposes of immediate delivery, demonstration or resale to another person, the transferee shall display upon such vehicle a temporary permit issued to such vehicle by the division. The transferee shall not be required to secure a transfer of registration or a new certificate of title, but upon his transfer of title or interest to another person, he shall execute an assignment and warranty of title upon the certificate of title previously issued, if available, and deliver the same, along with the documents of authority or certified copies thereof as may be sufficient or required by law to evidence the rights of such person, to the person to whom such transfer is made.

**History:** 1953 Comp., § 64-3-105, enacted by Laws 1978, ch. 35, § 52.

**ANNOTATIONS**

**Cross references.** — For temporary permits, *see* 66-3-6 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Gift of motor vehicle as affected by failure to comply with regulatory statute upon sale or transfer of motor vehicle, 100 A.L.R.2d 1219.

**Law reviews.** — For article, "Attachment in New Mexico - Part II," see 2 Nat. Resources J. 75 (1962).

## 66-3-106. Owner after transfer not liable for negligent operation.

The owner of a vehicle who has made a bona fide sale or transfer of his title or interest, and who has delivered possession of such vehicle and the certificate of title properly assigned to the purchaser or transferee, shall not be liable for any damages thereafter resulting from negligent operation of such vehicle by another.

**History:** 1953 Comp., § 64-3-106, enacted by Laws 1978, ch. 35, § 53.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Presumption and prima facie case as to ownership of vehicle causing highway accident, 27 A.L.R.2d 167.

60 C.J.S. Motor Vehicles § 40.

## 66-3-107. Duties of seller or transferor; additional duties of dealers; application for registration; penalty; mileage of vehicle.

A. Any seller or transferor, including a dealer, of a vehicle required to be registered pursuant to the Motor Vehicle Code [66-1-1 NMSA 1978] shall furnish to the purchaser upon delivery the necessary title properly assigned and shall inform the purchaser that application for registration must be filed with the department within thirty days of the date of sale. When a dealer licensed pursuant to Section 66-4-1 NMSA 1978 allows a vehicle to be purchased over a period of time pursuant to an expressed or implied contract and elects to retain a security interest in the vehicle, the dealer shall collect the necessary registration fees from the purchaser upon delivery of the vehicle and shall, within thirty days, pay all registration fees due on the vehicle to the department and shall give to the new purchaser the new registration certificate in the purchaser's name.

B. Every dealer, upon transferring by sale, lease or otherwise any vehicle, whether new or used, of a type subject to registration pursuant to the Motor Vehicle Code shall give written notice of the transfer to the department upon an appropriate form provided by the department.

C. Except as otherwise provided in this section, the dealer shall indicate on the form the actual mileage of the vehicle as indicated by the vehicle's odometer at the time of the transfer.

D. A sale shall be deemed completed and consummated when the purchaser of that vehicle has paid the purchase price or, in lieu thereof, has signed a purchase contract or security agreement and taken physical possession or delivery of that vehicle.

E. Failure to apply for assignment of registration and issuance of a new certificate of title within thirty days from the date of sale, transfer or assignment of a vehicle subjects the owner of the newly acquired vehicle to a penalty of twenty dollars ($20.00), which shall be collected by the department and shall be in addition to other fees and penalties provided by law.

**History:** 1953 Comp., § 64-3-107, enacted by Laws 1978, ch. 35, § 54; 1981, ch. 361, § 11; 1998, ch. 48, § 6; 2007, ch. 319, § 25.

**ANNOTATIONS**

**The 2007 amendment,** effective June 15, 2007, changed "transfer" to "registration" and "assignment".

**The 1998 amendment,** effective July 1, 1998, rewrote the section heading; in Subsection A, substituted "Any seller or transferor, including a dealer" for "Dealers required to be licensed under the provisions of the Motor Vehicle Code shall furnish to a purchaser upon delivery", substituted "pursuant to" for "under", inserted "shall furnish to the purchaser upon delivery", substituted "for" for "of", substituted "department" for "division", substituted "sale" for "delivery", inserted "licensed pursuant to Section 66-4-1 NMSA 1978", and substituted "department" for "division of motor vehicles"; in Subsection B, substituted "under" for "pursuant to" and "department" for "division" twice; and in Subsection E, substituted "subjects" for "shall subject" and "department" for "division".

**Noncompliance not failure of title or breach of warranty.** — The fact that the parties failed to comply with the title provisions would not operate to continue the plaintiff's status as a purchaser indefinitely. The title provisions refer to the duties of the dealer and transferee, but noncompliance therewith cannot be considered a failure of title, fraudulent misrepresentation, or breach of warranty as to freedom from liens on a motor vehicle. *Prince v. National Union Fire Ins. Co.*, 1965-NMSC-073,75 N.M. 313, 404 P.2d 137.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 32.

60 C.J.S. Motor Vehicles § 40.

## 66-3-108. Transfer to dealers.

When the transferee of a vehicle is a dealer who holds the vehicle for resale and does not drive the vehicle or permit it to be driven upon the highways, the dealer shall not be required to obtain transfer of registration of the vehicle or forward the certificate of title to the department. However, the dealer, upon transferring his title or interest to another person, shall execute an assignment and warrant of title upon the certificate of title and deliver the same to the person to whom the transfer is made.

**History:** 1953 Comp., § 64-3-108, enacted by Laws 1978, ch. 35, § 55; 1998, ch. 48, § 7.

**ANNOTATIONS**

**The 1998 amendment,** effective July 1, 1998, substituted "vehicle" for "same", deleted "operates the same only for purposes incident to a resale or when a dealer" following "and", substituted "department" for "division" and made minor stylistic changes.

## 66-3-109. Dealer's guarantee of title.

A dealer licensed under the Motor Vehicle Code [66-1-1 NMSA 1978] may guarantee the title to a specially constructed or reconstructed vehicle for which no title exists, and may guarantee the title of any vehicle for which the certificate of title cannot be obtained. Such guarantee shall be in the form of an affidavit filed with the division. Upon receipt of such affidavit, together with such other information as the division may require, and upon payment of the proper fees, the division, in its discretion, may issue a certificate of title for the vehicle named in the affidavit.

**History:** 1953 Comp., § 64-3-109, enacted by Laws 1978, ch. 35, § 56.

**ANNOTATIONS**

**Cross references.** — For the definition of "reconstructed vehicles", *see* 66-1-4.15 NMSA 1978.

For the definition of "specially constructed vehicle", *see* 66-1-4.16 NMSA 1978.

For resale of salvaged vehicles, *see* 66-3-115 NMSA 1978.

## 66-3-110. When division to reregister vehicle and issue new certificate.

A. The division upon receipt of a properly endorsed certificate of title, current registration evidence and proper application for registration or transfer of registration accompanied by the required fee and when satisfied as to the genuineness and regularity of the transfer and of the right of the transferee to a certificate of title shall reregister the vehicle as upon a new registration in the name of the new owner and issue a new certificate of title as upon an original application.

B. If the vehicle is a manufactured home, the division shall require in addition to those conditions set out in Subsection A of this section a certificate from the treasurer or assessor of the county in which the manufactured home is located showing that either:

(1) all property taxes due or to become due on the manufactured home for the current tax year or any past tax years have been paid; or

(2) no liability for property taxes on the manufactured home exists for the current year or any past tax years.

C. The division shall retain and appropriately file every surrendered certificate of title. The file shall be so maintained as to permit the tracing of title of the vehicles designated therein.

**History:** 1953 Comp., § 64-3-110, enacted by Laws 1978, ch. 35, § 57; 1983, ch. 295, § 28.

**ANNOTATIONS**

**Cross references.** — For definition of "division", *see* 66-1-4.4 NMSA 1978.

## 66-3-111. Assignment by person holding lien.

Any person holding a lien or encumbrance upon a vehicle, other than a lien dependent solely upon possession, may assign his title or interest in or to such vehicle to a person other than the owner without the consent of, and without affecting the interest of such owner or the registration of such vehicle, but in such event, he shall give to the owner a written notice of such assignment. The division, upon receiving a certificate of title assigned by the holder of the lien or encumbrance shown thereon and showing the name and address of the assignee, shall issue a new certificate of title as upon an original application.

**History:** 1953 Comp., § 64-3-111, enacted by Laws 1978, ch. 35, § 58.

**ANNOTATIONS**

**Cross references.** — For definition of "lien or encumbrance", *see* 66-1-4.10 NMSA 1978.

## 66-3-112. Release by lienholder to owner.

A person holding a lien or encumbrance as shown upon a certificate of title for a vehicle may release such lien or encumbrance or assign his interest to the owner without affecting the registration of said vehicle. The division, upon receiving a certificate of title upon which a lienholder has released or assigned his interest to the owner, or upon receipt of a certificate of title not so endorsed but accompanied by a legal release from a lienholder of interest in or to a vehicle, shall issue a new certificate of title as upon an original application.

**History:** 1953 Comp., § 64-3-112, enacted by Laws 1978, ch. 35, § 59.

## 66-3-113. Failure to deliver certificate; penalty.

A. Except as provided in Section 66-3-24B NMSA 1978, it is a misdemeanor for any person to fail or neglect to properly endorse and deliver a certificate of title to a transferee or owner lawfully entitled thereto.

B. Upon conviction of a second such offense, the offender is guilty of a misdemeanor but shall be punished by a fine of not more than one thousand dollars ($1,000) or by imprisonment for not more than three hundred sixty-four days, or both.

**History:** 1953 Comp., § 64-3-113, enacted by Laws 1978, ch. 35, § 60.

**ANNOTATIONS**

**Cross references.** — For the penalty for a misdemeanor, *see* 66-8-7 NMSA 1978.

**Noncompliance not failure of title or breach of warranty.** — The fact that the parties failed to comply with the title provisions would not operate to continue the plaintiff's status as a purchaser indefinitely. The title provisions refer to the duties of the dealer and transferee, but noncompliance therewith cannot be considered a failure of title, fraudulent misrepresentation, or breach of warranty as to freedom from liens on a motor vehicle. *Prince v. National Union Fire Ins. Co.*, 1965-NMSC-073,75 N.M. 313, 404 P.2d 137.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 44 to 48.

60 C.J.S. Motor Vehicles § 41.

## 66-3-114. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1990, ch. 120, § 45 repealed 66-3-114 NMSA 1978, as enacted by Laws 1978, ch. 35, § 61, relating to definitions, effective July 1, 1990. For provisions of former section, *see* the 1989 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* 66-1-4.1 to 66-1-4.20 NMSA 1978.

## 66-3-115. Notification forms; copies; resale of salvaged vehicle or motor vehicle.

A. No person licensed under Section 66-4-1 NMSA 1978 shall sell, give away or otherwise dispose of any vehicle or motor vehicle obtained in the course of business unless he has properly filled out a dismantler's notification form and mailed one copy of that form to the division of motor vehicles and one copy of the form to the law enforcement agency designated by the division of motor vehicles for that purpose. If the licensee has a certificate of title for the vehicle or motor vehicle, it must be mailed to the division of motor vehicles together with one copy of the dismantler's notification form.

B. The licensee shall furnish the new purchaser or recipient of any such salvaged vehicle or motor vehicle with a bill of sale and one copy of the dismantler's notification form which shall serve as proof of ownership only for dismantling, transporting or rebuilding purposes.

C. The purchaser of such vehicle or motor vehicle may obtain a new certificate of title authorizing him to use the vehicle or motor vehicle for transportation purposes, provided:

(1) he furnishes the division of motor vehicles with a bill of sale and a copy of the dismantler's notification form for the vehicle or motor vehicle to be retitled;

(2) the vehicle or motor vehicle is in satisfactory repair and is fully roadworthy; and

(3) the vehicle identification number can be verified and corresponds to the vehicle identification number stated on the dismantler's notification form.

D. The division of motor vehicles shall make or cause to be made all necessary inspections and verifications pursuant to this section and, if satisfied that all conditions have been met, shall issue a title. Such title shall indicate the vehicle identification number and the assigned New Mexico numbers, if any.

**History:** 1953 Comp., § 64-3-115, enacted by Laws 1978, ch. 35, § 62.

**ANNOTATIONS**

**Cross references.** — For dealer's guarantee of title for reconstructed vehicle, *see* 66-3-109 NMSA 1978.

## 66-3-116. Title cancellation.

The division of motor vehicles shall, upon receipt of a properly completed dismantler's notification form from a person licensed under Section 66-4-1 NMSA 1978, cancel the title of the vehicle in their records.

**History:** 1953 Comp., § 64-3-116, enacted by Laws 1978, ch. 35, § 63.

## 66-3-117. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 26, § 2 repealed 66-3-117 NMSA 1978, as enacted by Laws 1978, ch. 35, § 64, relating to official printouts on vehicles registered in this state, effective June 14, 1985. For present comparable provisions, *see* 66-2-7 NMSA 1978.

## 66-3-118. Manufacturer's certificate of origin; transfer of vehicle not previously registered.

A. Whenever a manufacturer or the agent or distributor of a manufacturer transfers a vehicle, not previously registered, to a dealer in this state, the manufacturer, agent or distributor at the time of transfer of the vehicle shall deliver to the dealer a manufacturer's certificate of origin. The certificate shall be signed by the manufacturer

and shall specify that the vehicle described has been transferred to the dealer named and that the transfer is the first transfer of the vehicle in ordinary trade and commerce.

B. The certificate shall contain a description of the vehicle, number of cylinders, type of body, engine number, serial number or other standard identification number provided by the manufacturer of the vehicle and space for proper reassignment to a New Mexico dealer or to a dealer duly licensed or recognized as such in another state, territory or possession of the United States.

C. Any dealer when transferring a vehicle, not previously registered, to another dealer shall, at the time of transfer, give the transferee the proper manufacturer's certificate of origin fully assigned to the transferee.

D. When a vehicle not previously registered is transferred to a dealer who does not hold a franchise granted by the manufacturer of the vehicle to sell that type or model of vehicle, the transferee must obtain a registration of the vehicle and certificate of title but shall not be required to pay the excise tax imposed by Section 7-14-3 NMSA 1978.

**History:** 1953 Comp., § 64-3-118, enacted by Laws 1978, ch. 35, § 65; 2007, ch. 319, § 26.

**ANNOTATIONS**

**The 2007 amendment,** effective June 15, 2007, added Subsection B and changed the exemption from payment of excise tax from the tax imposed by Section 64-6-27 NMSA 1978 to the tax imposed by Section 7-14-3 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 31.

## 66-3-119. Vehicle to be dismantled.

In addition to any requirements pursuant to Section 1 [66-4-10 NMSA 1978] of this 2018 act:

A. except as provided in Sections 66-3-115, 66-3-116 and 66-3-118 through 66-3-121 NMSA 1978, any person who sells, gives away, trades or disposes of any vehicle as scrap or to be dismantled or destroyed by any person required to be licensed under Section 66-4-1 NMSA 1978 shall assign the certificate of title of the vehicle to the recipient and shall deliver the certificate of title to the recipient. A licensed dismantler receiving any registration plates shall either return them to the owner upon demand or destroy them within five days;

B. except as provided in Sections 66-3-115, 66-3-116 and 66-3-118 through 66-3-121 NMSA 1978, no person shall dismantle or destroy a vehicle unless the person possesses a certificate of title or other proof of ownership of the vehicle and completes

and sends in the dismantler's notification form to the division and any law enforcement agency designated by the division for that purpose; and

C. any person licensed under Section 66-4-1 NMSA 1978 may take possession of an abandoned vehicle; provided that:

(1) the person obtains at the time of acquisition a written clearance form from a law enforcement agency mentioned in Section 66-3-121 NMSA 1978;

(2) within five days after acquisition of the abandoned vehicle, the person requests from the division an official form indicating the names and addresses of all lienholders and owners of record. If the abandoned vehicle has out-of-state license plates or the licensee has some other reason to believe that the abandoned vehicle is registered in a state other than New Mexico, the person shall request the same information from the appropriate agency of that state;

(3) within five days after receiving the names and addresses of all lienholders and owners of record, the person informs them by certified mail, return receipt requested, of the person's possession of the abandoned vehicle and of all charges, if any, against the abandoned vehicle and of the person's intent to dispose of the vehicle if no claim is made within thirty days after the delivery of the letter;

(4) in those cases where neither the division nor the appropriate state agency specified in this section is able to furnish the names of any lienholders or owners of record, the vehicle shall then be deemed as abandoned, and a licensed dismantler may dispose of the abandoned vehicle once the dismantler has properly completed a dismantler's notification form for the abandoned vehicle and has submitted the form to the division together with a copy of the correspondence with either the division or the state agency specified in this section indicating that there are no lienholders or owners of record;

(5) when a lienholder or owner of record is known and the required notice has been sent and the dismantler has waited the required thirty days and has not received a valid claim, the dismantler shall properly complete a dismantler's notification form for the abandoned vehicle and submit the form together with any correspondence with the division or appropriate state agency specified in this subsection indicating the names and addresses of lienholders and owners of record plus proof of notification together with an affidavit signed by the dismantler stating under oath or affirmation that the dismantler has complied with provisions of this section and the dismantler has not received during the thirty-day period following notification any valid claim against the abandoned vehicle in question or, while a valid claim has been made, the dismantler has not received within sixty days following the notification payment for fees connected with towing and storage of the abandoned vehicle in question;

(6) any person who fails to give notice required in this subsection within the time limit specified shall forfeit all liens, interest and claims to the abandoned vehicle in question if claimed by an owner or lienholder;

(7) failure of an owner or lienholder to assert a claim or to pay all legal storage or towing fees, if any, within the specified period of time shall result in that person's forfeiture of liens, interest or claims to the abandoned vehicle; and

(8) upon complying with the conditions of this section and waiting the required period of time, the abandoned vehicle is the property of the dismantler for dismantling or salvage purposes, and the dismantler shall not be required to take further action under the lien laws of this state unless the abandoned vehicle is used for other than dismantling or salvage purposes, and any person licensed under Section 66-4-1 NMSA 1978 may dismantle or destroy the abandoned vehicle.

**History:** 1953 Comp., § 64-3-119, enacted by Laws 1978, ch. 35, § 66; 2018, ch. 75, § 3.

## ANNOTATIONS

**Cross references.** — For definition of "abandoned vehicle", *see* 66-1-4.1 NMSA 1978.

For definition of "lien or encumbrance", *see* 66-1-4.10 NMSA 1978.

For definition of "owner", *see* 66-1-4.13 NMSA 1978.

For notice requirements, *see* 66-2-11 NMSA 1978.

For penalty for violation of this section, *see* 66-4-9 NMSA 1978.

**The 2018 amendment,** effective January 1, 2019, clarified that the provisions of this section are in addition to provisions in the Motor Vehicle Code that require auto recyclers to electronically notify the department of all motor vehicle purchases and to verify with the department if the motor vehicle has been reported stolen by checking the electronic system established and maintained by the department, revised certain statutory references, and made numerous stylistic changes; deleted "motor vehicle" throughout the section; added the introductory clause; in Subsection A, after "upon demand or", deleted "surrender" and added "destroy", and after "within five days", deleted "of receiving the plates to the division"; in Subsection C, added "abandoned" preceding "vehicle" throughout the subsection, in Paragraph C(2), after "official", deleted "printout" and added "form", in Paragraph C(4), after "and has", deleted "mailed one copy of" and added "submitted", and after "division", deleted "and one copy of the form to the law enforcement agency designated by the motor vehicle division for that purpose", and in Paragraph C(5), after "vehicle in question", deleted "One copy of the dismantler’s notification form shall be sent to the law enforcement agency designated by the motor vehicle division for that purpose".

**Past registration of vehicle does not preclude being abandoned.** — Past registration in New Mexico of a vehicle or motor vehicle does not preclude it from being "abandoned," provided that all other criteria contained in 64-4-13, 1953 Comp. (similar to this section) are satisfied, and further provided that a notice has been sent to the last known address of all parties who may have an interest in the vehicle, according to department of motor vehicle records (now motor vehicle division), and no such party has asserted a claim to, or interest in, the vehicle in response to the notice sent to them. 1976 Op. Att'y Gen. No. 76-10.

## 66-3-120. Transportation of certain vehicles; proof of ownership.

A. Any person transporting any crushed or inoperable vehicle or motor vehicle on any public way, street or highway in any manner whatsoever shall have in his possession proof of ownership of such vehicle, or:

(1) an affidavit from the property owner upon whose property the vehicle or motor vehicle was abandoned authorizing the vehicle's removal from the property owner's land; and

(2) a police clearance indicating the vehicle has not been reported stolen.

B. Any person who possesses either a New Mexico dismantler's or wrecker's license, a New Mexico auto dealer's license, a state corporation commission [public regulation commission] license or a vehicle contract or common carrier license issued by the federal interstate commerce commission, shall be exempt from the provisions of this section while transporting vehicles which are not abandoned, provided he prominently displays a dealer's license plate or a dismantler's plate on the vehicle in tow, or has a New Mexico state corporation commission [public regulation commission] vehicle contract or common carrier permit number or a federal interstate commerce commission vehicle contract or common carrier permit number prominently displayed on the towing vehicle.

C. Any person failing to have such documentation in his possession while transporting such a vehicle or motor vehicle is subject to the penalties produced in Section 66-4-9 NMSA 1978 and any vehicle or motor vehicle being transported by such a person shall be subject to immediate confiscation. Said vehicle or motor vehicle shall be towed to an authorized police impound lot until proof of ownership is presented or until the documentation described in this section is provided by either the owner of the vehicle or the person in possession. Failure to provide such documentation within thirty days shall result in the vehicle or motor vehicle being deemed unclaimed and thus subject to claim by the person or firm in possession.

**History:** 1953 Comp., § 64-3-120, enacted by Laws 1978, ch. 35, § 67.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler. It was not enacted by the legislature and is not part of the law.

Laws 1998, ch. 108, § 80 provided that references to the state corporation commission be construed as references to the public regulation commission.

## *66-3-120. Transportation of certain vehicles; proof of ownership. (Effective July 1, 2024.)*

*A. A person transporting a crushed or inoperable vehicle or motor vehicle on a public way, street or highway in any manner shall have in the person's possession proof of ownership of the vehicle or:*

*(1) an affidavit from the property owner upon whose property the vehicle or motor vehicle was abandoned authorizing the vehicle's removal from the property owner's land; and*

*(2) a police clearance indicating the vehicle or motor vehicle has not been reported stolen.*

*B. Any person who possesses either a New Mexico dismantler's or wrecker's license, a New Mexico auto dealer's license, a department of transportation license or a vehicle contract or common carrier license issued by the federal interstate commerce commission shall be exempt from the provisions of this section while transporting vehicles that are not abandoned, provided the person prominently displays a dealer's license plate or a dismantler's plate on the vehicle in tow or has a New Mexico department of transportation vehicle contract or common carrier permit number or a federal interstate commerce commission vehicle contract or common carrier permit number prominently displayed on the towing vehicle.*

*C. Any person failing to have such documentation in the person's possession while transporting such a vehicle or motor vehicle is subject to the penalties produced in Section 66-4-9 NMSA 1978, and any vehicle or motor vehicle being transported by the person is subject to immediate confiscation. The vehicle or motor vehicle shall be towed to an authorized police impound lot until proof of ownership is presented or until the documentation described in this section is provided by either the owner of the vehicle or the person in possession. Failure to provide documentation within thirty days shall result in the vehicle or motor vehicle being deemed unclaimed and thus subject to claim by the person or firm in possession.*

***History:*** *1953 Comp., § 64-3-120, enacted by Laws 1978, ch. 35, § 67; 2023, ch. 100, § 76.*

***ANNOTATIONS***

***The 2023 amendment,*** *effective July 1, 2024, removed references to the state corporation commission due to the transfer of certain powers and duties to the department of transportation; changed each occurrence of "state corporation commission" to "department of transportation" throughout the section; and in Subsection C, after "Section", changed "64-4-9 NMSA" to "66-4-9 NMSA 1978".*

## 66-3-121. Disposal of abandoned vehicle or motor vehicle.

A. Any person upon whose property or in whose possession is found an abandoned vehicle or motor vehicle shall have authority to sell, retain, give away or dispose of the abandoned vehicle or motor vehicle to any person licensed under Sections 66-4-1 through 66-4-9 NMSA 1978 provided that he notifies a law enforcement agency prior to the disposal and obtains from that agency a written clearance stating that neither the agency's records nor the computerized records of the national crime information center indicate that the abandoned vehicle or motor vehicle has been reported as stolen and either:

(1) the vehicle or motor vehicle in question regardless of its age is either totally wrecked or in such a state of disrepair that it is suitable only for dismantling purposes;

(2) the vehicle or motor vehicle in question is at least eight years of age or older; or

(3) the vehicle or motor vehicle in question has been placed in any storage or wrecker yard at the request of a law enforcement agency or a property owner upon whose property the vehicle or motor vehicle was abandoned and has remained unclaimed in that yard for a period of thirty days, in which case the owner of the storage yard may proceed to make a claim against the motor vehicle or vehicle, as specified in Subsection C of Section 66-3-119 NMSA 1978 as though it were abandoned. Any person wishing to obtain the vehicle may not charge more than fifty cents ($.50) per day for storage unless he is licensed as a vehicle storage yard, and he must notify owners and lienholders within thirty days or lose all rights to claim the vehicle.

B. In the case of any vehicle or motor vehicle which is less than eight years of age or in such a state of repair that it will be placed back into service or which is not to be used for dismantling purposes or which a property owner wishes to retain for his own use or to sell to anyone other than a licensed dismantler, the person shall proceed to make claim for the vehicle or motor vehicle through a lien process and obtain a new certificate of title prior to disposal.

**History:** 1953 Comp., § 64-3-121, enacted by Laws 1978, ch. 35, § 68; 1989, ch. 318, § 9.

**ANNOTATIONS**

**Cross references.** — For the penalty for violation of this section, *see* 66-4-9 NMSA 1978.

**The 1989 amendment,** effective July 1, 1989, substituted "66-4-1 through 66-4-9 NMSA 1978" for "64-4-1 through 64-4-9 NMSA 1953" in the introductory paragraph of Subsection A, in Subsection A(3) inserted "or motor vehicle" near the beginning of the first sentence, and substituted "66-3-119 NMSA 1978" for "64-3-119 NMSA 1953" near the end of that sentence; inserted "or motor vehicle" near the beginning of Subsection B; and made minor stylistic changes throughout the section.

## 66-3-122. Registration effective after death of owner.

Upon the death of an owner of a vehicle subject to registration, its registration shall continue in force as a valid registration until the end of the registration period for which the license plate or sticker was issued, or until the ownership of the vehicle is transferred before the end of such registration period by the executor or administrator of the estate of the deceased owner or by a legatee or distributee of the estate, or until the ownership thereof is transferred to a new owner before the end of such registration period by the survivor of two joint owners thereof.

**History:** 1953 Comp., § 64-3-122, enacted by Laws 1978, ch. 35, § 69.

## 66-3-123. Requirements of purchaser; forms; distribution.

In addition to any requirements pursuant to Section 1 [66-4-10 NMSA 1978] of this 2018 act, purchasers licensed under the provisions of Section 66-4-1 NMSA 1978 shall, upon purchase of a vehicle to be dismantled, crushed or otherwise destroyed, submit copies of the dismantler's notification form as provided for in Section 66-3-124 NMSA 1978 as follows:

A. electronically to the department as required by Section 66-3-121 NMSA 1978, along with the actual title or proof of ownership required in the state in which the vehicle is registered or licensed;

B. one copy by certified mail within thirty days of acquisition to the local law enforcement agency designated by the department. The agency shall process the form through the files of stolen or embezzled vehicles within five days of receipt of the form;

C. one copy to be retained by the purchaser for as long as the vehicle remains in the purchaser's possession or until the vehicle is destroyed, but in no instance fewer than three years; and

D. one copy to be retained and provided to any subsequent purchaser of the vehicle. The purchaser shall retain the copy for as long as the vehicle remains in the purchaser's possession or until the vehicle is destroyed.

**History:** 1953 Comp., § 64-3-123, enacted by Laws 1978, ch. 35, § 70; 1991, ch. 160, § 8; 2018, ch. 75, § 4.

**ANNOTATIONS**

**Cross references.** — For the penalty for violation of this section, *see* 66-4-9 NMSA 1978.

**The 2018 amendment,** effective January 1, 2019, clarified that the provisions of this section are in addition to provisions in the Motor Vehicle Code that require auto recyclers to electronically notify the department of all motor vehicle purchases and to verify with the department if the motor vehicle has been reported stolen by checking the electronic system established and maintained by the department, required dismantlers to electronically submit one copy of the dismantler's notification form to the department, and required dismantlers to retain a copy of the notification form for at least three years; in the introductory clause, added "In addition to any requirements pursuant to Section 1 of this 2018 act"; in Subsection A, deleted "one copy" and added "electronically", and after "registered or licensed", deleted "provided that with the prior approval of the department, the required information may be transmitted electronically to the department in lieu of submitting a copy of the form"; and in Subsection C, after "destroyed", added "but in no instance fewer than three years".

**The 1991 amendment,** effective July 1, 1991, deleted "or motor vehicle" following "vehicle" throughout the section; in the introductory paragraph, substituted "66-4-1 NMSA 1978" for "64-4-1 NMSA 1953" and "66-3-124 NMSA 1978" for "64-3-124 NMSA 1953"; in Subsection A, substituted "department" for "motor vehicle division" and "66-3-121 NMSA 1978" for "64-3-121 NMSA 1953" and added the proviso; substituted "department" for "motor vehicle division which" in Subsection B; deleted "or purchasers" following "purchaser" in the first sentence in Subsection D, and made related and other stylistic changes in Subsections C and D.

## 66-3-124. Department to provide forms.

In addition to any requirements pursuant to Section 1 [66-4-10 NMSA 1978] of this 2018 act, the department shall issue a dismantler's notification form to be used by any persons licensed under the provisions of Section 66-4-1 NMSA 1978 for all vehicles purchased to be dismantled, crushed or otherwise destroyed. The form shall require such information as is determined by the department to be necessary.

**History:** 1953 Comp., § 64-3-124, enacted by Laws 1978, ch. 35, § 71; 1991, ch. 160, § 9; 2018, ch. 75, § 5.

**ANNOTATIONS**

**Cross references.** — For the penalty for violation of this section, *see* 66-4-9 NMSA 1978.

**The 2018 amendment,** effective January 1, 2019, clarified that the provisions of this section are in addition to provisions in the Motor Vehicle Code that require auto recyclers to electronically notify the department of all motor vehicle purchases and to verify with the department if the motor vehicle has been reported stolen by checking the electronic system established and maintained by the department; and added "In addition to any requirements pursuant to Section 1 of this 2018 act".

**The 1991 amendment,** effective July 1, 1991, substituted "Department to provide" for "Division of motor vehicles" in the catchline; in the first sentence, substituted "department" for "division", deleted "quadruplicate" preceding "dismantler's", substituted "66-4-1 NMSA 1978" for "64-4-1 NMSA 1953" and deleted "or motor vehicles" following "vehicles" and, in the second sentence, substituted "department to be necessary" for "motor vehicle division and set out in its regulations".

## 66-3-125. Restrictions upon licensees.

In addition to any requirements pursuant to Section 1 [66-4-10 NMSA 1978] of this 2018 act, a person licensed under the provisions of Sections 66-4-1 through 66-4-7 and 66-4-9 NMSA 1978 may, no earlier than thirty days after sending the dismantler's notification form as required by Section 66-3-123 NMSA 1978, proceed with the business of shredding, compacting, crushing or otherwise disposing of a vehicle purchased in accordance with the provisions of Sections 66-4-1 through 66-4-7 and 66-4-9 NMSA 1978; provided, however, dismantling of the vehicle may proceed immediately upon the sending of the dismantler's notification form.

**History:** 1953 Comp., § 64-3-125, enacted by Laws 1978, ch. 35, § 72; 1989, ch. 318, § 10; 2018, ch. 75, § 6.

**ANNOTATIONS**

**Cross references.** — For the penalty for violation of this section, *see* 66-4-9 NMSA 1978.

**The 2018 amendment,** effective January 1, 2019, clarified that the provisions of this section are in addition to provisions in the Motor Vehicle Code that require auto recyclers to electronically notify the department of all motor vehicle purchases and to verify with the department if the motor vehicle has been reported stolen by checking the electronic system established and maintained by the department, clarified certain statutory references, and made technical changes; and added "In addition to any requirements pursuant to Section 1 of this 2018 act", and after each occurrence of "66-4-1 through", added "66-4-7 and", and deleted "or motor vehicle" throughout the section.

**The 1989 amendment,** effective July 1, 1989, twice substituted "66-4-1 through 66-4-9 NMSA 1978" for "64-4-1 through 64-4-9 NMSA 1953", substituted "thirty days" for "five days" near the beginning of the section, substituted "66-3-123 NMSA 1978" for "64-3-

123 NMSA 1953" near the middle of the section, and inserted "or motor vehicle" near the end of the section.

## 66-3-126. Casual sales; registration; penalty.

A. Unless a person is a motor vehicle dealer or the holder of a security interest filed pursuant to Section 66-3-201 NMSA 1978, before the person attempts to sell a used motor vehicle, the person shall legally possess the title to the used motor vehicle.

B. Any person who violates any provision of this section is guilty of a misdemeanor and shall be punished by a fine of three hundred dollars ($300) or by imprisonment for not less than thirty days or both.

**History:** Laws 1987, ch. 250, § 2; 2023, ch. 137, § 1.

**ANNOTATIONS**

**The 2023 amendment,** effective July 1, 2023, removed a provision related to where an owner of a motor vehicle, not a dealer, may sell the vehicle, and provided that a person attempting to sell a used motor vehicle must legally possess the title to the used motor vehicle unless the person attempting to sell the motor vehicle is a dealer; in the section heading, deleted "place of sale; advertising" and added "registration"; and deleted former Subsection A and added a new Subsection A.

## 66-3-127. Warning of violation; removal of vehicle.

A. A law enforcement officer is authorized to place a warning sticker on any motor vehicle displayed at a location in violation of Section 2 [66-3-126 NMSA 1978] of this act and to provide for removal of the vehicle if it is at the same location twenty-four hours after the warning sticker is placed on the motor vehicle.

B. The warning sticker shall contain the following information:

(1) the date and time the warning sticker was affixed to the motor vehicle;

(2) a statement that pursuant to this violation, if the motor vehicle is not removed within twenty-four hours after the sticker is affixed, the motor vehicle shall be towed away and stored at the owner's expense and if the motor vehicle is moved to another unlawful location, it will be subject to immediate removal without warning; and

(3) the location and telephone number where additional information may be obtained.

C. If a motor vehicle on which a warning sticker has once been issued and affixed is found in another unlawful location, the law enforcement officer may immediately without

warning provide that the motor vehicle be towed away and stored at the owner's expense.

D. Within forty-eight hours after a motor vehicle is towed away and stored pursuant to this section, the towing and storage facility so designated by the law enforcement agency shall give written notice by certified mail to the registered owner of the motor vehicle, if known, that the motor vehicle has been towed away and shall give the address of the storage facility where the motor vehicle is stored.

**History:** Laws 1987, ch. 250, § 3.

# PART 3
# SECURITY INTERESTS

## 66-3-201. Filing security interests.

A. A security interest in a vehicle of a type required to be titled and registered in New Mexico is not valid against attaching creditors, subsequent transferees or lienholders unless perfected as provided by this section. This provision does not apply to liens dependent upon possession nor to property tax liens on manufactured homes perfected under Section 66-3-204 NMSA 1978.

B. Title applications may be submitted electronically to the department but all title applications shall be accompanied by the certificate of title last issued for the vehicle and shall contain the name and address of any lienholder, the date the security agreement was executed and the maturity date of the agreement.

C. Upon receipt of a title application, the department shall record the date it was received. When satisfied as to the genuineness of the application, the department shall file it and issue a new certificate of title showing the owner's name and all liens existing against the vehicle.

D. No security interest filed in any state which does not show all liens on the certificate of title shall be valid against any person in this state other than the parties to the security agreement or those persons who take with actual notice of the agreement.

**History:** 1953 Comp., § 64-3-201, enacted by Laws 1978, ch. 35, § 73; 1995, ch. 135, § 13.

**ANNOTATIONS**

**Cross references.** — For definition of "lien or encumbrance", *see* 66-1-4.10 NMSA 1978.

For electronic authentication and substitution for signature, *see* 14-3-15.2 NMSA 1978.

For oil and gas products liens, *see* 48-9-1 to 48-9-8 NMSA 1978.

For secured transactions, *see* 55-9-101 NMSA 1978 et seq.

For motor vehicle sales financing, *see* 58-19-1 NMSA 1978 et seq.

**The 1995 amendment,** effective June 16, 1995, in Subsection A, substituted "manufactured" for "mobile" and updated the code reference at the end; in Subsection B, inserted "Title applications may be submitted electronically to the department but"; and in Subsection C, substituted "department" for "division" in two places and made minor stylistic changes.

**Failure to perfect security interest.** — Where defendant loaned plaintiff funds to pay indebtedness on plaintiff's truck; defendant received title for the truck from plaintiff's lender; plaintiff retained possession of the truck; plaintiff never signed an assignment of title to the truck to defendant; defendant did not have title transferred to defendant's name; and defendant did not file a lien on the truck with the motor vehicle division, defendant did not have a valid security interest in the truck and was not authorized to repossess the truck when plaintiff failed to pay the loan. *Jones v. Beavers*, 1993-NMCA-100, 116 N.M. 634, 866 P.2d 362.

**Filing provision afforded no protection to creditor with actual knowledge.** — Provision, which provides that no conditional sale contract, conditional lease, chattel mortgage or other lien or encumbrance or title retention instrument upon a vehicle of a type required to be registered by the provision, other than a lien dependent upon possession, affords no protection to a creditor with actual knowledge of a prior conditional sale or lease agreement. *Riggs v. Gardikas*, 1967-NMSC-120, 78 N.M. 5, 427 P.2d 890.

**Compliance mandatory in order to retain title or obtain lien.** — Section 64-5-1, 1953 Comp. (similar to this section) makes compliance with the provisions thereof mandatory in order to retain title or obtain a valid lien or encumbrance. *Clovis Fin. Co. v. Sides*, 1963-NMSC-065, 72 N.M. 17, 380 P.2d 173.

**To perfect a security interest in a mobile home,** the secured creditor must file its security agreement with the motor vehicle division. Subsequently, a certificate of title is issued reflecting on its face all liens filed on the subject vehicle. *In re Portillo*, 18 Bankr. 995 (Bankr. D.N.M. 1982).

**Failure to file rendered contracts invalid to intervening judgment creditors.** — The clear language of Section 64-5-1, 1953 Comp. (similar to this section) compels the conclusion that the parties' failure to file the conditional sales contracts rendered them invalid as to the intervening judgment creditors of a party. *Riggs v. Gardikas*, 1967-NMSC-120, 78 N.M. 5, 427 P.2d 890.

**No prior interest if application not filed before levy.** — Where bank, on motion for summary judgment, failed to show that application for title was filed before levy to satisfy judgment debt, bank did not have prior security interest in automobile. *Novak v. Dow*, 1970-NMCA-104, 82 N.M. 30, 474 P.2d 712.

**Chattel mortgages and instruments having effect of placing a lien** on personal property are required to be in writing. *Clovis Fin. Co. v. Sides*, 1963-NMSC-065, 72 N.M. 17, 380 P.2d 173.

**Removable drilling units not subject to security interest.** — Drilling units which are bolted and welded to trucks but which can be removed are not subject to a security interest in the trucks requiring perfection under this section. *First Nat'l Bank v. Niccum (In re Permian Anchor Servs.)*, 649 F.2d 763 (10th Cir. 1981).

**The motor vehicle division should accept for filing all instruments,** with or without acknowledgments appearing thereon, filed pursuant to Sections 64-5-1 and 64-5-2, 1953 Comp. (similar to this section and Section 66-3-202 NMSA 1978, respectively), and which instruments create and evidence a lien or encumbrance, or title retention, upon motor vehicles required to be registered. 1962 Op. Att'y Gen. No. 62-30.

**Certified photocopy of instrument creating lien** is valid for filing. 1963 Op. Att'y Gen. No. 63-56.

**Title to accompany any lien to be filed.** — If the bureau of revenue (now revenue division of taxation and revenue department) did not require the title to be filed with the lien, the law as it is set up would be ineffective. The person purchasing the vehicle with a title, on the face, clear and unencumbered, but a lien having been placed against the vehicle, the enforcement of that lien against the vehicle would be in violation of the dealers of bona fide purchaser for value. Therefore it is the opinion of this office that the motor vehicle department (now motor vehicle division) may require the title to accompany any lien to be filed in that department (division). 1953 Op. Att'y Gen. No. 53-5846.

**Law reviews.** — For article, "Attachment in New Mexico - Part II," see 2 Nat. Resources J. 75 (1962).

For article, "The Uniform Commercial Code: Some New Mexico Problems and Proposed Legislative Solutions," see 3 Nat. Resources J. 487 (1963).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 31.

60 C.J.S. Motor Vehicles § 42.

## 66-3-202. Filing effective to give notice.

A. On or after June 1, 1996, the filing of an application with the division and the issuance of a new certificate of title by the division as provided in Section 66-3-201 NMSA 1978 constitute constructive notice of all security interests in the vehicle described in the application. Except for a manufactured home or recreational vehicle, if the application is received by the division within ten days after the date the security agreement was executed, constructive notice shall be effective as of the date of the execution of the security agreement, and the security interest shall be deemed to have been filed and perfected as of that date and shall have priority over other liens attached or filed subsequent to that date, except for tax liens filed by the state, county or federal governments. In the case of a manufactured home or recreational vehicle, if the application is received by the division within sixty days after the date the security agreement was executed, constructive notice shall be effective as of the date of the execution of the security agreement, and the security agreement shall be deemed to have been filed and perfected as of that date and shall have priority over other liens attached or filed subsequent to that date, except for tax liens filed by the state, county or federal governments. In all other cases, constructive notice shall be effective as of the date of receipt noted on the title application.

B. The method provided in this article for perfecting a security interest shall be exclusive except as to liens dependent upon possession and property tax liens on manufactured homes perfected under Section 66-3-204 NMSA 1978.

C. The constructive notice provided for in this section terminates twelve months after the maturity date of the debt. Unless refiled in a manner prescribed by the division within twelve months after the maturity date, the division may ignore the security interest in the issuance of all subsequent certificates of title.

**History:** 1953 Comp., § 64-3-202, enacted by Laws 1978, ch. 35, § 74; 1996, ch. 78, § 1.

## ANNOTATIONS

**The 1996 amendment,** effective May 15, 1996, rewrote Subsection A, substituted "manufactured" for "mobile" and "66-3-204 NMSA 1978" for "64-3-204 NMSA 1978" in Subsection B, and made stylistic changes in Subsection C.

**Lien for unpaid trailer court rental space not superior.** — The lien of an owner or operator of a trailer court for unpaid space rental is not superior to a prior chattel mortgage on a house trailer filed as required by Section 64-5-2, 1953 Comp. (similar to this section). *Diamond Trailer Sales Co. v. Munoz*, 1963-NMSC-104, 72 N.M. 190, 382 P.2d 185.

**Application not received within 10 days not constructive notice.** — Where application for title showing lien is not received within 10 days after execution of security agreement, the filing of security agreement does not constitute constructive notice of security interest. *Novak v. Dow*, 1970-NMCA-104, 82 N.M. 30, 474 P.2d 712.

**Application filed after levy not prior interest.** — Where bank, on motion for summary judgment, failed to show that application for title was filed before levy to satisfy judgment debt, bank did not have prior security interest in automobile. *Novak v. Dow*, 1970-NMCA-104, 82 N.M. 30, 474 P.2d 712.

**Section provides exclusive method of perfection.** — This section specifically provides that the method provided under Sections 64-5-1 and 64-5-2, 1953 Comp. (similar to Section 66-3-201 NMSA 1978 and this section, respectively) for giving constructive notice of a lien or encumbrance upon a registered vehicle shall be exclusive of the provisions of law which otherwise require or relate to the recording or filing of instruments creating or evidencing title retention or other liens or encumbrances upon vehicles of a type subject to registration. 1962 Op. Att'y Gen. No. 62-30.

**Uniform Commercial Code inapplicable to security interests in motor vehicles.** — Under a plain reading of the statutes and authorities the provisions of the Uniform Commercial Code (55-1-101 NMSA 1978 et seq.) do not apply to the perfection of liens, encumbrances or title retention creating a security interest in motor vehicles. 1962 Op. Att'y Gen. No. 62-30.

**The motor vehicle division should accept for filing all instruments,** with or without acknowledgments appearing thereon, filed pursuant to Sections 64-5-1 and 64-5-2, 1953 Comp. (similar to Section 66-3-201 NMSA 1978 and this section, respectively) and which instruments create and evidence a lien or encumbrance or title retention upon motor vehicles required to be registered. 1962 Op. Att'y Gen. No. 62-30.

**Law reviews.** — For article, "Attachment in New Mexico - Part II," see 2 Nat. Resources J. 75 (1962).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 31.

60 C.J.S. Motor Vehicles § 42.

## 66-3-203. Report of stored, unclaimed and unidentified motor vehicles.

An operator of a place of business for garaging, repairing, parking or storing vehicles for the public, in which a vehicle remains unclaimed for a period of thirty days, shall, within five days after the expiration of that period, report in writing to the New Mexico state police at Santa Fe and the sheriff of the county in which the unit is stored, setting forth the make of car, model-year, [and] engine, serial and vehicle numbers of the vehicle unclaimed. A person who fails to report a vehicle as unclaimed in accord with this subsection forfeits all claims and liens for its parking or storing and is guilty of a misdemeanor punishable by a fine of not more than twenty-five dollars ($25.00).

**History:** 1953 Comp., § 64-3-203, enacted by Laws 1978, ch. 35, § 75.

## ANNOTATIONS

**Bracketed material.** — The bracketed material in this section was inserted by the compiler. It was not enacted by the legislature, and it is not part of the law.

**Requirement inapplicable to stolen vehicle returned to owner by sheriff.** — The provisions of Section 64-5-3, 1953 Comp. (similar to this section), requiring the owner of an automobile storage business to report unclaimed motor vehicles to the state police and to the sheriff, are not intended to apply to a stolen motor vehicle that has been recovered by the sheriff and towed to owner's place of business at the request of sheriff. *Foundation Reserve Ins. Co. v. Faust*, 1962-NMSC-176, 71 N.M. 271, 377 P.2d 681.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 61A C.J.S. Motor Vehicles § 717.

# 66-3-204. Property tax liens on manufactured homes; filing; effect.

A. Upon receipt of a notification of unpaid taxes on a manufactured home required by Section 7-38-52 NMSA 1978, the division shall file the notification and indicate on it the date and time of receipt. It shall maintain an index and file of the notifications by vehicle registration number.

B. From the date and time of receipt of a notification, the unpaid taxes, penalty and interest certified by the county treasurer constitute a lien on and a security interest in the manufactured home on behalf of the state until paid. The lien is valid against holders of prior perfected security interests, attaching creditors and subsequent transferees and when perfected by filing in accordance with this section constitutes constructive notice of the lien claimed. When a lien is perfected under this section, the division shall send written notification of the lien to all holders of prior perfected security interests as shown on the vehicle's certificate of title. The notice shall be sent no later than ten days after the filing of the lien.

C. Upon receipt of a certified notice from a county treasurer showing that the taxes, penalty and interest for which a lien is claimed have been paid, the division shall indicate in writing on the filed notification the fact of payment, shall attach the notice of payment to the original notification, shall remove both documents from its lien file to a separate file and shall make a written entry in its index indicating the satisfaction of the lien. At the same time, it shall send written notification to the registered owner of the manufactured home of the action it has taken.

**History:** 1953 Comp., § 64-3-204, enacted by Laws 1978, ch. 35, § 76; 1983, ch. 295, § 29.

## ANNOTATIONS

**Cross references.** — For definition of "division", *see* 66-1-4.4 NMSA 1978.

# PART 4
# NONRESIDENT OWNERS OF VEHICLES

## 66-3-301. Registration by nonresidents.

A. Any nonresident owner of a vehicle of a type otherwise subject to registration may use or permit the use of the vehicle within the state for a period of one hundred eighty days without registering his vehicle, but any vehicle so used must display current registration plates issued for the vehicle in the state where the owner resides.

B. Any person gainfully employed within the boundaries of this state for a period of thirty days or more within a sixty-day period shall be presumed to be a resident of this state.

C. Notwithstanding the fact of their employment, the following are not required to register their vehicles if they display current registration plates issued for the vehicle in the state where the owner resides:

(1) nonresident students engaged in a full-time course of study at an institution of higher learning located within this state, and the vehicle displays a valid nonresident student sticker issued by the institution which they attend; or

(2) a nonresident owner gainfully employed within the boundaries of this state who uses his vehicle to commute daily from his home in another state to and from his place of employment within this state. The provisions of this paragraph apply only if the state in which the owner resides extends like privileges to New Mexico residents gainfully employed within the boundaries of that state.

D. A nonresident owner of a foreign vehicle operated within this state for the transportation of persons or property for compensation or for the transportation of merchandise either regularly according to a schedule or for a consecutive period exceeding thirty days shall register the vehicle and pay the same fees as required with reference to like vehicles owned by residents of this state. This subsection shall not be construed as limiting the effect of validly entered reciprocal agreements between New Mexico and other states or of proportional registration provided for in Section 66-3-4 NMSA 1978.

E. Every nonresident including any foreign corporation carrying on business within this state and owning and regularly operating in that business any vehicle, trailer, semitrailer, house trailer or pole trailer within the state shall register each vehicle and pay the same fees as required with reference to like vehicles owned by residents of this state.

**History:** 1953 Comp., § 64-3-301, enacted by Laws 1978, ch. 35, § 77; 1991, ch. 41, § 1.

## ANNOTATIONS

**The 1991 amendment,** effective June 14, 1991, in Subsection B, deleted "consecutive" preceding "days" and "but this presumption shall be rebutted upon a showing that the person's employment in this state is for no more than one hundred eighty days" following "resident of this state" and inserted "within a sixty-day period"; in Subsection D, substituted "66-3-4 NMSA 1978" for "64-3-4 NMSA 1953" in the second sentence; in Subsection E, deleted "motor" preceding "vehicle, trailer"; and made minor stylistic changes in Subsections A, D and E.

### I. GENERAL CONSIDERATION.

**Unconstitutional to require immediate acquisition of license.** — There being no reasonable basis for the classification, Laws 1941, ch. 165, § 1(a) was invalid as discriminatory and a denial of "equal protection of law" because it required a nonresident owner, who accepts gainful employment within the state, to immediately acquire a license from New Mexico. *State v. Pate*, 1943-NMSC-007, 47 N.M. 182, 138 P.2d 1006.

**One definition of "nonresident".** — If the individual intends to return to a place where his political rights are exercised and where he is subject to taxation, etc., he is a nonresident of New Mexico. If such intent to return to his "legal residence" is absent and his intention is to be a New Mexico resident, he is a New Mexico resident and should comply with the motor vehicle laws on registration. 1957 Op. Att'y Gen. No. 57-330.

**Vehicle not registered out-of-state must be in state.** — A special motor vehicle, used to haul exceptional loads, which was leased by a New Mexico firm holding a certificate of convenience and necessity from an Arizona trucking firm, was subject to registration in the state of New Mexico even though it was only used on highways of New Mexico for eight days due to the fact that it was not registered in the state of Arizona and did not display current registration plates from that state. 1969 Op. Att'y Gen. No. 69-95.

**Nonresident motorist may be cited as misdemeanant if vehicle unregistered.** — A nonresident motorist can be required to show proof that his out-of-state vehicle is "duly registered in" some foreign state as is required under Section 64-6-1A, 1953 Comp. (similar to this section). If the motorist cannot show proof of such foreign registration, and if it appears that the vehicle probably is not duly registered, then he may be cited as a misdemeanant under Section 64-6-1A. 1966 Op. Att'y Gen. No. 66-62.

**Rental motor vehicles and rental trailers** come within the provisions of Section 64-6-1, 1953 Comp. (similar to this section). 1963 Op. Att'y Gen. No. 63-137.

### II. EMPLOYMENT OR RESIDENCE WITHIN STATE.

**Nonresident may operate vehicle without state registration for stated period.** — Section 64-6-1, 1953 Comp. (similar to this section) permits a nonresident owner of any

foreign vehicle of a type otherwise subject to registration to operate or allow the use or operation of the vehicle in this state for a period of 30 days (now 180 days) without registering it. After the 30-day (now 180-day) period, the vehicle is to be registered. 1962 Op. Att'y Gen. No. 62-113, *overruled by* 1971 Op. Att'y Gen. No. 71-98.

**Once intent to become resident manifest, registration requirements must be met.** — The circumstances that would establish or invoke a required registration in New Mexico can only be determined by a declaration of intent to become a resident or by a manifestation of such intention as evidenced by employment of a permanent nature, voter registration or any other act lending support to a subjective determination of the intention to become a resident of this state. 1958 Op. Att'y Gen. No. 58-191.

**These provisions apply equally to those who only temporarily** accept employment within the state so long as that person remains within the state for a period in excess of 30 days. 1959 Op. Att'y Gen. No. 59-197.

**Nonresidents employed within state are exempt.** — Nonresident persons employed within the state and who merely use their vehicle as a means of conveyance to and from such employment, but who do not regularly operate such vehicle in the course of their business, are exempt from the purchase of New Mexico registration plates and the payment of the usual fees in connection therewith so long as they display registration plates on the vehicle from the state of residence. 1959 Op. Att'y Gen. No. 59-215.

**Nonresident truckers cannot avoid necessity of registration** simply because on weekends the vehicles were driven to Texas. 1962 Op. Att'y Gen. No. 62-113, *overruled by* 1971 Op. Att'y Gen. 71-98.

**Period not tolled by short absence.** — The purpose of Section 64-6-1, 1953 Comp. (similar to this section) could not be circumvented by a nonresident motorist who, with the intent to return to New Mexico, leaves the state for only a day or two in an effort to toll the running of the period. 1959 Op. Att'y Gen. No. 59-197; 1963 Op. Att'y Gen. No. 63-137.

**Nonresident trucker may not relieve himself of requirement of registration** of his truck imposed by Section 64-6-1, 1953 Comp. (similar to this section), as amended, by removing his truck from the state for short intervals. 1959 Op. Att'y Gen. No. 59-71.

## III. CARRYING ON BUSINESS.

**Out-of-state leased vehicles subject to registration requirements.** — Subsection D of Section 64-6-1, 1953 Comp. (similar to Subsection D of this section) would apply if a New Mexico lessee used a vehicle registered in another state for a period of 30 days or more. 1969 Op. Att'y Gen. No. 69-95.

**Carrying on business within state subjects owner to registration requirements.** — Subsection E of Section 64-6-1, 1953 Comp. (similar to Subsection E of this section)

only applies if the nonresident owner carries on business within this state. 1969 Op. Att'y Gen. No. 69-95.

**Test is whether nonresident owner engaged in profession or trade.** — The test for the determination of whether or not a nonresident vehicle, which is not used for the transportation of persons or property for compensation, and which is not owned by a person or corporation carrying on business within this state, is subject to registration under motor vehicle registration and licensing laws, is whether or not the nonresident owner of that vehicle is engaged in any employment, trade, profession or occupation in this state. 1954 Op. Att'y Gen. No. 54-6037.

## IV. MILITARY PERSONNEL.

**Servicemen located within state excluded from registration requirement.** — Servicemen located within this state, but who are residents of and domiciled in another state, are excluded from registration of their motor vehicle. 1959 Op. Att'y Gen. No. 59-216.

**Federal civilian employees temporarily assigned to military installations.** — United States government civilian employees temporarily assigned to military installations within the state are not required to register their motor vehicles in New Mexico under the provisions of Section 64-6-1, 1953 Comp. (similar to this section). 1957 Op. Att'y Gen. No. 57-79.

**Serviceman need not register if wife uses vehicle.** — A serviceman who owns a vehicle registered in his own name in the state of his residence not required to register his motor vehicle in New Mexico under the provisions of Section 64-6-1, 1953 Comp. (similar to this section) if his wife is gainfully employed within the state but is not using the vehicle in her work. 1957 Op. Att'y Gen. No. 57-172.

**Serviceman must register if not registered in home state.** — Section 514 of the Soldiers' and Sailors' Civil Relief Act, 50 U.S.C. App. § 574 (now Servicemembers Civil Relief Act, 50 U.S.C. App. § 571), forbids New Mexico's requiring a nonresident serviceman to register his automobile so long as the automobile is registered in the serviceman's home state. If, however, the automobile is not registered in his home state, it is lawfully subject to registration in New Mexico and Section 64-6-1, 1953 Comp. (similar to this section) should be enforced. 1971 Op. Att'y Gen. No. 71-98.

**Must register if commercial vehicle.** — New Mexico may assess the full registration fee for commercial vehicles, owned by nonresident service personnel, because of the language of Section 64-6-1E, 1953 Comp. (similar to this section). 1975 Op. Att'y Gen. No. 75-43.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 56, 57.

Discrimination against nonresidents in vehicle registration requirements, 61 A.L.R. 347, 112 A.L.R. 63.

Statute in relation to foreign-owned vehicles operating within state, 82 A.L.R. 1091, 138 A.L.R. 1499.

Applicability of motor vehicles registration laws to corporation domiciled in state but having branch trucking bases in other states, 16 A.L.R.2d 1414.

60 C.J.S. Motor Vehicles §§ 66 to 69.

## 66-3-302. Caravan fee.

A. A person or an employee, agent or representative of that person shall not use the highways of New Mexico for the transportation of any vehicle, regardless of whether the vehicle is registered in another state or whether the vehicle is transported on its own wheels or on another vehicle or by being drawn or towed behind another, if the vehicle is transported by any person or the agents or employees of that person engaged in the business of transporting vehicles or if the vehicle is being transported for the purpose of delivery to any purchaser of the vehicle on a sale or contract of sale previously made, unless the vehicle carries:

(1) a valid New Mexico registration plate;

(2) a valid dealer's plate issued by the department;

(3) a special permit for the use of the highways of this state for the transportation of the vehicle in the manner in which the vehicle is being transported, which has first been obtained and the fee paid as specified in this section; or

(4) a valid temporary transportation permit issued under Subsection B of Section 66-3-6 NMSA 1978.

B. Special permits for the use of the highways of this state for the transportation of such vehicles shall be issued by the department of transportation upon application on the form prescribed by the department of transportation and upon payment of a fee of ten dollars ($10.00) for each vehicle transported by use of its own power and a fee of seven dollars ($7.00) for each vehicle carried in or on another vehicle or towed or drawn by another vehicle and not transported in whole or in part by the use of its own power. A fee imposed pursuant to this section may be referred to as a "caravan fee". Every permit shall show upon its face the registration number assigned to each vehicle, the name and address of the owner, the manner of transportation authorized and a description of the vehicle registered, including the engine number. The permit shall be carried at all times by the person in charge of the vehicle. A suitable tag or placard for each vehicle may be issued by the department of public safety and, if issued, shall be at all times displayed on each vehicle being transported. The permit, tag or placard shall

not be used upon or in connection with the transportation of any vehicle other than the one for which the permit, tag or placard is issued.

C. A caravan fee shall not apply to the transportation of vehicles carried on another vehicle for the operation of which a weight distance tax is paid, nor shall the vehicle transported be required to carry a registration plate or temporary transportation permits. The New Mexico state police division of the department of public safety is authorized to impound any vehicle transported in violation of the Motor Transportation Act [Chapter 65, Articles 1, 3 and 5 NMSA 1978] until a proper permit has been secured and any fine levied has been paid.

**History:** 1953 Comp., § 64-3-302, enacted by Laws 1978, ch. 35, § 78; 1995, ch. 135, § 14; 2005, ch. 258, § 2; 2007, ch. 319, § 27; 2015, ch. 3, § 34; 2021, ch. 59, § 9.

## ANNOTATIONS

**The 2021 amendment,** effective June 18, 2021, made conforming changes due to the transfer of certain authority from the department of public safety to the department of transportation; and in Subsection B, after each of the first two occurrences of "department of", deleted "public safety" and added "transportation".

**The 2015 amendment,** effective July 1, 2015, provided the New Mexico state police division of the department of public safety with the authority to impound vehicles in violation of the Motor Transportation Act; in Subsection C, in the second sentence, after "The", deleted "motor transportation and the", after "state police", changed "divisions" to "division", and after "public safety", deleted "are" and added "is".

**The 2007 amendment,** effective June 15, 2007, amended the section to change department from the motor vehicle division of the taxation and revenue department to the public safety department.

**The 2005 amendment,** effective July 1, 2005, changed the fees in Subsection B from $7.50 to $10.00 for each vehicle transported by use of its own power and from $5.00 to $7.00 for each vehicle carried or towed by another vehicle; and provided in Subsection B that the fee imposed pursuant to this section may be referred to as the caravan fee.

**The 1995 amendment,** effective June 16, 1995, rewrote the section to the extent that a detailed comparison is impracticable.

**Constitutionality of tax.** — State law exacting a permit fee for the privilege of transporting motor vehicles over the highways of the state for purposes of sale does not violate the Fourteenth Amendment of the federal constitution. *Morf v. Bingaman*, 298 U.S. 407, 56 S. Ct. 756, 80 L. Ed. 1245, *rehearing denied*, 299 U.S. 619, 57 S. Ct. 4, 81 L. Ed. 456 (1936).

**Applicability.** — Caravan tax does not apply to transportation of out-of-state automobiles by a driver who is under contract to the owner, arranged by an agent, to transport the car from one state to another when the vehicle is not being transported for sale or for lease. 1958 Op. Att'y Gen. No. 58-208.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 155.

60 C.J.S. Motor Vehicles § 78.

## 66-3-303. Registration by military personnel.

Officers and enlisted personnel of the United States army, navy, marine corps, coast guard and air force may operate their personal passenger vehicles in this state subject to the provisions of Section 66-3-301 NMSA 1978.

**History:** 1953 Comp., § 64-3-303, enacted by Laws 1978, ch. 35, § 79.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 84.

# PART 5
# SPECIAL REGISTRATION PLATES

## 66-3-401. Operation of vehicles under dealer plates.

A. Any vehicle that is required to be registered pursuant to the Motor Vehicle Code [66-1-1 NMSA 1978] and that is included in the inventory of a dealer may be operated or moved upon the highways for any purpose, provided that the vehicle display in the manner prescribed in Section 66-3-18 NMSA 1978 a unique plate issued to the dealer as provided in Section 66-3-402 NMSA 1978. This subsection shall not be construed as limiting the use of temporary registration permits issued to dealers pursuant to Section 66-3-6 NMSA 1978. Each dealer plate shall be issued for a specific vehicle in a dealer's inventory. If a dealer wishes to use the plate on a different vehicle, the dealer must reregister that plate to the different vehicle.

B. The provisions of this section do not apply to work or service vehicles used by a dealer. For the purposes of this subsection, "work or service vehicle" includes any vehicle used substantially as a:

(1) parts or delivery vehicle;

(2) vehicle used to tow another vehicle;

(3) courtesy shuttle; or

(4) vehicle loaned to customers for their convenience.

C. Each vehicle included in a dealer's inventory required to be registered pursuant to the provisions of Subsection A of this section must conform to the registration provisions of the Motor Vehicle Code, but is not required to be titled pursuant to the provisions of that code. When a vehicle is no longer included in a dealer's inventory, and is not sold or leased to an unrelated entity, the dealer must title the vehicle and pay the motor vehicle excise tax that would have been due when the vehicle was first registered by the dealer.

D. In lieu of the use of dealer plates pursuant to this section, a dealer may register and title a vehicle included in a dealer's inventory in the name of the dealer upon payment of the registration fee applicable to that vehicle, but without payment of the motor vehicle excise tax, provided the vehicle is subsequently sold or leased in the ordinary course of business in a transaction subject to the motor vehicle excise tax or the leased vehicle gross receipts tax.

**History:** 1953 Comp., § 64-3-401, enacted by Laws 1978, ch. 35, § 80; 1998, ch. 48, § 8; 2005, ch. 324, § 9; 2007, ch. 319, § 28.

## ANNOTATIONS

**Cross references.** — For special registration or prestige plates, *see* 66-3-15, 66-3-16 NMSA 1978.

For special plates for horseless carriages, *see* 66-3-27 NMSA 1978.

For fees for dealer plates, *see* 66-6-17 NMSA 1978.

For suspension or revocation of special plates, *see* 66-8-5 NMSA 1978.

**The 2007 amendment,** effective June 15, 2007, amended Subsection A to provide that dealer plates shall be issued for a specific vehicle in the dealer’s inventory and that if the dealer wishes to use the plate on a different vehicle, the dealer must reregister the plate to the different vehicle and deletes "or auto recycler" throughout the section.

**The 2005 amendment,** effective January 1, 2006, changed "wrecker of vehicles" to "auto recycler".

**The 1998 amendment,** effective July 1, 1998, rewrote this section to the extent that a detailed comparison is impracticable.

**Plates not required for work or service vehicles.** — Although Section 66-3-401 NMSA 1978 permits general use of a special dealer plate, certain vehicles, such as

parts or delivery vehicles, owned by dealers are excluded from the subsection authorizing general use. *Gross v. Pirtle*, 245 F.3d 1151 (10th Cir. 2004).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 150 to 152.

60 C.J.S. Motor Vehicles § 78.

## 66-3-401.1. Use of vehicles with dealer plates by coaches and athletic directors.

A. Pursuant to Section 66-3-401 NMSA 1978, a dealer may register a vehicle in the name of the dealer for the purpose of providing the use of a vehicle from the inventory of the dealer to a full-time coach or athletic director at any state-supported four-year institution of higher education in New Mexico.

B. A vehicle that a dealer elects to register pursuant to Subsection A of this section is not required to be titled pursuant to the provisions of the Motor Vehicle Code [66-1-1 NMSA 1978], but the vehicle must be included in the driver's inventory for Internal Revenue Code of 1986 purposes and transferred to the full-time coach or athletic director under conditions that require the dealer to report the value of the use of the vehicle as income to the full-time coach or athletic director.

C. The number of vehicles registered and used pursuant to the provisions of this section shall be excluded when determining compliance with the maximum number of dealer plates allowed pursuant to Subsection B of Section 66-3-402 NMSA 1978.

**History:** 1978 Comp., § 66-3-401.1, enacted by Laws 1998, ch. 48, § 9; 1999, ch. 129, § 1; 2007, ch. 319, § 29.

**ANNOTATIONS**

**Cross references.** — For the Internal Revenue Code of 1986, *see* Title 26 of the United States Code.

**The 2007 amendment,** effective June 15, 2007, replaced "special dealer plates" with "dealer plates".

**The 1999 amendment,** effective April 5, 1999, rewrote the section heading, which formerly read "Operation of Vehicles Under Special Collegiate Registration Plates"; in Subsection A, deleted "In lieu of the use of special dealer plates" from the beginning, deleted "and title" following "may register", and deleted "pursuant to the provisions of Section 66-3-416 NMSA 1978" following "name of the dealer"; in Subsection B, substituted "A vehicle" for "Each vehicle" at the beginning; and added Subsection C.

## 66-3-402. Application for dealer plates.

A. A dealer may apply to the department on the appropriate form for one or more dealer plates. The applicant shall submit proof of being a bona fide dealer as may reasonably be required by the department.

B. The maximum number of dealer plates for which a dealer of new or used motor vehicles or motorcycles may apply pursuant to this section shall be:

(1) for a dealer who sold in the previous calendar year five or more but fewer than fifty vehicles, one plate;

(2) for a dealer who sold in the previous calendar year more than fifty but fewer than one hundred vehicles, three plates;

(3) for a dealer who sold in the previous calendar year more than one hundred but fewer than five hundred vehicles, five plates; and

(4) for a dealer who sold in the previous calendar year five hundred or more vehicles, ten plates.

C. A dealer shall be entitled to five plates in the first calendar year in which it begins business. A dealer who is licensed pursuant to the provisions of Section 66-4-1 NMSA 1978 on or after August 1 of any calendar year shall also be entitled to five plates in the calendar year following the year in which it is first licensed to do business.

D. The department upon granting application shall issue to the applicant a certificate containing the applicant's name and address and the numbers of the dealer plates assigned to the applicant.

**History:** 1953 Comp., § 64-3-402, enacted by Laws 1978, ch. 35, § 81; 1998, ch. 48, § 10; 2005, ch. 324, § 10; 2007, ch. 319, § 30.

## ANNOTATIONS

**Cross references.** — For general definitions applicable to this section, *see* 66-1-4 to 66-1-4.20 NMSA 1978.

For suspension or revocation of temporary permits for misuse by dealer, *see* 66-3-6 NMSA 1978.

**The 2007 amendment,** effective June 15, 2007, eliminated the references to "special dealer plates" and deleted former Subsection C that provided maximum numbers of special dealer plates for auto recyclers.

**The 2005 amendment,** effective January 1, 2006, changed "wrecker of vehicles", "wrecker or dismantler of new or used motor vehicles or motorcycles", "wrecker or dismantler" and "wrecker" to "auto recycler".

**The 1998 amendment,** effective July 1, 1998, in the section heading, deleted "and issuance of certificate and" preceding "special", and inserted "dealer"; in Subsection A, deleted "manufacturer" following "Any", substituted "apply" for "make application", substituted "department" for "division", deleted "for a certificate containing a general 'vehicle business number' and" following "form", inserted "dealer", deleted "also" preceding "submit", deleted "manufacturer" following "fide", and substituted "department" for "division"; added present Subsections B through D and redesignated the remaining Subsections accordingly; in present Subsection E, substituted "department" for "division", substituted "the numbers of the special dealer plates" for "general vehicle business number"; and deleted former Subsection C.

**When temporary permits available to manufacturers.** — Upon issuance of a motor vehicle dealers' license to a qualified manufacturer, the division may thereafter extend the use of temporary transportation permits to vehicle manufacturers. 1979 Op. Att'y Gen. No. 79-31.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 60 C.J.S. Motor Vehicles § 101.

## 66-3-403. Expiration of dealer plates.

Every dealer plate issued pursuant to Section 66-3-402 NMSA 1978 expires at midnight on December 31 of each year. Upon payment of the proper fee, the person to whom the dealer plate was issued may apply to the department for a new plate or validating sticker for the ensuing year. Renewal of all dealer plates shall be on or before December 31. A person who operates a vehicle with a dealer plate that has expired is guilty of a penalty assessment misdemeanor.

**History:** 1953 Comp., § 64-3-403, enacted by Laws 1978, ch. 35, § 82; 1998, ch. 48, § 11; 2007, ch. 319, § 31; 2018, ch. 74, § 10.

**ANNOTATIONS**

**The 2018 amendment,** effective July 1, 2018, reduced the penalty for operating a vehicle with an expired dealer plate to a penalty assessment misdemeanor; in the last sentence, deleted "It is" and added "A person who operates a vehicle with a dealer plate that has expired is guilty of a penalty assessment", and after "misdemeanor", deleted "pursuant to the Motor Vehicle Code to operate a vehicle with a dealer plate that has expired."

**The 2007 amendment,** effective June 15, 2007, eliminated references to special dealer plates.

**The 1998 amendment,** effective July 1, 1998, rewrote this section to the extent that a detailed comparison is impracticable.

## 66-3-404. Dealer plates not transferable.

A. Dealer plates are not transferable between dealers.

B. Whenever a dealer ceases operation for any reason, the dealer shall surrender to the division any dealer plates issued to the dealer.

**History:** 1953 Comp., § 64-3-404, enacted by Laws 1978, ch. 35, § 83; 1989, ch. 318, § 11; 2005, ch. 324, § 11; 2007, ch. 319, § 32.

**ANNOTATIONS**

**The 2007 amendment,** effective June 15, 2007, provided that dealer plates are not transferable between dealers and that when a dealer ceases operation, the dealer shall surrender to the division the dealer plates issued to the dealer.

**The 2005 amendment,** effective January 1, 2006, changed "wrecker of vehicles" to "auto recycler".

**The 1989 amendment,** effective July 1, 1989, deleted "refund upon surrender" at the end of the catchline, and in Subsection B deleted "theretofore" preceding "issued" and also deleted the former second sentence which read: "A refund covering the fees paid for the unexpired period of such plates prorated on a quarterly basis shall thereupon be made by the division."

## 66-3-405. Special plates for members of congress.

A. Upon compliance with all laws of this state relating to registration and licensing of motor vehicles, and upon application, any delegate from New Mexico to the congress of the United States shall be furnished with license plates for such passenger cars as are required to be registered in this state. Upon each plate, in lieu of the registration number of the vehicle owner, shall be the name of the house of the United States congress in which he serves, followed by the number which indicates his seniority as compared with the other member, or members, of the same house of congress from New Mexico.

B. At the time of delivery of a special plate, the applicant shall surrender the current license plate issued for such motor vehicle, if any have been issued.

C. When the ownership of the motor vehicle for which a special plate has been furnished by the director changes from one person to another, or the owner ceases to be a member of congress, the special license plate herein authorized shall be promptly removed from the vehicle by the holder of the special plate and returned to the director, at which time the person so removing the special plate is entitled to receive a regular license plate for such motor vehicle.

D. The holder of a special plate is entitled to transfer such a special plate from one automobile to another during the year in which the plate is valid, upon application to the director for the transfer. In the event such a transfer is made, the owner of the vehicle

from which the special plate is removed is not entitled to receive a regular license plate except upon payment of the fees established by law.

**History:** 1953 Comp., § 64-3-405, enacted by Laws 1978, ch. 35, § 84.

## 66-3-406. Special registration plates for private vehicles.

A. Upon compliance with all laws relating to registration and licensing of motor vehicles and upon application to the division, special registration plates shall be furnished for vehicles owned by:

(1) elected state officials;

(2) members of the legislature;

(3) the chief clerks of the house of representatives and of the senate;

(4) the sergeants at arms of the house of representatives and of the senate; and

(5) disabled persons, pursuant to Section 66-3-16 NMSA 1978.

B. Special registration plates furnished under this section shall identify the officials, members and disabled persons as such. If legislators, the special registration plates shall indicate whether they are members of the house of representatives or of the senate.

C. When the ownership of the vehicle for which a special registration plate has been furnished by the division changes or the holder ceases to qualify, the special registration plate shall immediately be removed from the vehicle by the holder of the special registration plate and returned to the director, at which time the person removing the special registration plate shall receive a regular registration plate for the vehicle.

D. The holder of a special registration plate may transfer his special registration plate from one vehicle to another during the year in which the plate is valid upon application to the director for the transfer. If a transfer is made, the owner of the vehicle from which the special registration plate is removed may receive a regular registration plate upon payment of the fees established by law.

E. The holder of a special registration plate pursuant to Paragraph (2) of Subsection A of this section may simultaneously hold a regular registration for the same vehicle. The division shall, by rule, provide for maintenance of simultaneous registration records.

**History:** 1953 Comp., § 64-3-406, enacted by Laws 1978, ch. 35, § 85; 1979, ch. 327, § 2; 1993, ch. 180, § 1; 1994, ch. 122, § 1.

**ANNOTATIONS**

**Cross references.** — For restrictions on indicating title of office on plates, *see* 66-3-14 NMSA 1978.

**The 1994 amendment,** effective May 18, 1994, deleted the first sentence of Subsection C, which read: "At the time of delivery of the special registration plate, the official, member or disabled person shall surrender his current registration plate issued for the vehicle if any has been issued"; substituted "may receive a regular registration plate upon" for "may not receive a regular registration plate except upon" in Subsection D; and added Subsection E.

**The 1993 amendment,** effective July 1, 1993, inserted "registration" in the section heading and throughout Subsections C and D; deleted "motor" before "vehicles" near the end of the introductory language of Subsection A and before "vehicle" in the first sentence and near the beginning of the second sentence of Subsection C; deleted former Paragraphs (5) and (7) of Subsection A, which read: "members of the consular or diplomatic corps of a foreign country who are certified by the United States department of state" and "members of the New Mexico mounted patrol", respectively, renumbering former Paragraph (6) as Paragraph (5) and making related grammatical changes; and made stylistic changes in Subsections A through D.

**"Lieutenant-governor's aide" or "advisor" cannot appear on plate.** — The department of motor vehicles (now motor vehicle division) may not issue a license plate having on it "lieutenant-governor's aide" or "lieutenant governor's advisor." 1967 Op. Att'y Gen. No. 67-114.

## 66-3-407. Special plates for private vehicles used in public service.

A. Upon compliance with all laws relating to registration and licensing of motor vehicles, and upon application to the division, and the payment of necessary fees, special registration plates shall be furnished for motor vehicles owned by members of an organized group, committed under its charter or bylaws to perform such services as are reasonably related to the public safety or welfare.

B. Special license plates furnished under this section shall identify the members as belonging to the particular unit and shall be of such design and cost such additional fee of not less than fifteen dollars ($15.00) as the division, in its discretion, may provide.

C. At the time of delivery of the special plate, the member shall surrender his current registration plate issued for the motor vehicle, if any has been issued.

D. Each member shall only be entitled to one special plate, and when the ownership of the motor vehicle, for which the plate has been furnished by the division changes, or the owner ceases to be a member of the organization, the special plate shall

immediately be removed from the vehicle by the holder of the special plate and returned to the director, at which time it shall be exchanged for a regular registration plate.

E. The holder of a special plate may transfer his special plate from one vehicle to another during the year in which the plate is valid upon application to the director for transfer. If such a transfer is made, the owner of the vehicle from which the plate is removed may not receive a regular registration plate except upon payment of the fees established by law.

**History:** 1953 Comp., § 64-3-407, enacted by Laws 1978, ch. 35, § 86.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 60 C.J.S. Motor Vehicles § 80.

## 66-3-407.1. Special registration plates.

Any person who is entitled to a special registration plate, as provided for in Sections 66-3-405 through 66-3-407 NMSA 1978, and subsequently fails to qualify for such a special registration plate shall remove the special registration plate no later than January 1 of the year following the year in which the person failed to qualify for the special registration plate.

**History:** Laws 1989, ch. 87, § 1.

## 66-3-408. Special registration plates for recreational vehicles.

All recreational vehicles registered in New Mexico shall carry a special registration plate, including any armed forces veteran plate, disabled veteran plate, purple heart plate, medal of honor plate, ex-prisoner of war plate, Pearl Harbor survivor plate or patriot plate. The color and design of the plates shall be at the discretion of the director.

**History:** 1953 Comp., § 64-3-408, enacted by Laws 1978, ch. 35, § 87; 2007, ch. 319, § 33.

**ANNOTATIONS**

**The 2007 amendment,** effective June 15, 2007, added the list of examples of special registration plates.

## 66-3-409. Special registration plates; medal of honor recipients.

A. The department shall issue distinctive pale blue, white and gold registration plates to any person who has been awarded the medal of honor and who so requests and submits proof satisfactory to the department that the person has been awarded that medal. The plates shall each bear the inscription "Medal of Honor Recipient". No fee,

including the regular registration fee applicable to the passenger motor vehicle, if any, shall be collected for the issuance of a special registration plate pursuant to this section.

B. No person shall falsely make any representation that the person is a medal of honor recipient in order to be eligible to be issued special registration plates pursuant to this section when the person is in fact not such a recipient. A person who violates the provisions of this subsection is guilty of a penalty assessment misdemeanor.

**History:** 1953 Comp., § 64-3-12.4, enacted by Laws 1978, ch. 199, § 1; 1988, ch. 10, § 1; 1993, ch. 180, § 2; 1995, ch. 8, § 1; 2018, ch. 74, § 11.

**ANNOTATIONS**

**The 2018 amendment,** effective July 1, 2018, reduced the penalty for falsely representing oneself as a medal of honor recipient in order to be eligible to be issued a special medal of honor registration plate, and made technical changes; in Subsection A, replaced each occurrence of "division" with "department"; and in Subsection B, after "No person shall falsely", deleted "represent himself to be" and added "make any representation that the person is".

**The 1995 amendment,** effective June 16, 1995, deleted former Subsection C which barred issuance of special registration plates under this section after July 1, 1995.

**The 1993 amendment,** effective July 1, 1993, substituted "recipients" for "winners" in the catchline; inserted "including the regular registration fee applicable to the passenger motor vehicle, if any" in the third sentence of Subsection A; and added Subsection C.

**The 1988 amendment,** effective May 18, 1988, in Subsection A, substituted "division" for "department" twice and made a minor stylistic change in the first sentence, and, in the third sentence, deleted "in addition to the regular registration fee, applicable to the passenger motor vehicle if any" following "No fee"; and, in Subsection B, inserted "registration" in the first sentence.

## 66-3-410. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 148, § 2 repealed 66-3-410 NMSA 1978, as enacted by Laws 1978, ch. 197, § 2, relating to the authorization of motorcycle prestige plates, effective July 1, 1985. For present comparable provisions, *see* 66-3-15 NMSA 1978.

## 66-3-411. Special registration plates; prisoners of war and surviving spouses; submission of proof; penalty.

A. The division shall issue distinctive registration plates to any person, or to the surviving spouse of any deceased person, who was held as a prisoner of war by an

enemy of the United States during any armed conflict, upon the submission by the person or surviving spouse of proof satisfactory to the division that he was held as a prisoner of war by an enemy of the United States during a period of armed conflict or that he is the surviving spouse of such a person. No fee, including the regular registration fee applicable to the passenger motor vehicle, if any, shall be collected for issuance of a special registration plate pursuant to this section.

B. No person shall falsely represent himself to have been held as a prisoner of war or to be the surviving spouse of a prisoner of war so as to be eligible to be issued special registration plates pursuant to this section when he in fact was not held as a prisoner of war or when he in fact is not the surviving spouse of a prisoner of war.

C. Any person who violates the provisions of Subsection B of this section is guilty of a misdemeanor.

**History:** 1978 Comp., § 66-3-411, enacted by Laws 1978, ch. 99, § 2; 1979, ch. 375, § 1; 1987, ch. 268, § 21; 1989, ch. 282, § 1; 1993, ch. 180, § 3; 1995, ch. 8, § 2.

**ANNOTATIONS**

**The 1995 amendment,** effective June 16, 1995, deleted former Subsection D which barred issuance of special registration plates under this section after July 1, 1995.

**The 1993 amendment,** effective July 1, 1993, substituted "or to the surviving spouse of any deceased person" for "and the surviving spouse of any person" and "he" for "she" before "is the surviving spouse" and inserted "or surviving spouse" in the first sentence of Subsection A; inserted "including the regular registration fee applicable to the passenger motor vehicle, if any" in the second sentence of Subsection A; deleted "herself" after "prisoner of war or" and substituted "he" for "she" before "in fact" in Subsection B; and added Subsection D.

**The 1989 amendment,** effective June 16, 1989, inserted "and surviving spouses" in the catchline; in Subsection A, inserted "and the surviving spouse of any person" and "or that she is the surviving spouse of such a person"; and, in Subsection B, inserted "or herself to be the surviving spouse of a prisoner of war" and "or when she in fact is not the surviving spouse of a prisoner of war".

## 66-3-412. Special registration plates; fifty percent or more disabled veterans; submission of proof; penalty.

A. The department shall issue distinctive disabled veteran registration plates for up to two vehicles, including motorcycles, to a person who is a veteran of the armed forces of the United States and was fifty percent or more disabled while serving in the armed forces of the United States, upon the submission by the person of proof satisfactory to the department that the person was fifty percent or more disabled while serving in the armed forces of the United States. No fee, including the regular registration fee

applicable to the passenger motor vehicle or regular motorcycle registration fees, if any, shall be collected for issuance of up to two special registration plates pursuant to this section. A person eligible for a special registration plate pursuant to this section and also eligible for one or more special registration plates pursuant to the Motor Vehicle Code shall be issued up to two special registration plates for which the person is eligible, in any combination of the person's choice free of charge, notwithstanding any fee that would otherwise be charged for a special registration plate.

B. The department shall issue additional disabled veteran special registration plates in excess of the two plates issued without a fee pursuant to Subsection A of this section to a person who is qualified to receive disabled veteran special registration plates; provided that the person shall pay the standard plate and registration fees for the additional registration plates.

C. No person shall falsely make any representation as having been fifty percent or more disabled while serving in the armed forces of the United States so as to be eligible to be issued special registration plates pursuant to this section when the person in fact was not fifty percent or more disabled while serving in the armed forces of the United States.

D. A person who violates the provisions of Subsection B of this section is guilty of a misdemeanor.

E. As used in this section, "veteran" means an individual who was regularly enlisted, drafted, inducted or commissioned, who was accepted for and assigned to active duty in the armed forces of the United States and who was not separated from such service under circumstances amounting to dishonorable discharge.

**History:** Laws 1979, ch. 299, § 2; 1980, ch. 44, § 1; 1987, ch. 268, § 22; 1993, ch. 180, § 4; 1994, ch. 125, § 1; 1995, ch. 8, § 3; 1999, ch. 174, § 1; 2003, ch. 204, § 1; 2011, ch. 147, § 1; 2016, ch. 4, § 3; 2019, ch. 42, § 1; 2023, ch. 158, § 1.

## ANNOTATIONS

**The 2023 amendment,** effective June 16, 2023, authorized the department of motor vehicles to issue additional disabled veteran special vehicle registration plates in excess of the two plates provided to qualified persons without a fee, provided that the qualified person pays the standard plate and registration fees for the additional registration plates; and added a new Subsection B and redesignated former Subsections B through D as Subsections C through E, respectively.

**The 2019 amendment,** effective July 1, 2019, allowed veterans that are rated fifty percent or more disabled to apply for up to two registration plates for which the veteran is eligible, in any combination of the veteran's choice, without being charged fees; in Subsection A, after "shall be collected for issuance of", added "up to two", after "special registration plates pursuant to", deleted "Sections 66-3-406, 66-3-409, 66-3-411 and 66-

3-412.1 NMSA 1978" and added "the Motor Vehicle Code", after "shall be issued", deleted "only one" and added "up to two", after the next occurrence of "special registration", added "plates for which the person is eligible, in any combination", and after "the person's choice", added "free of charge, notwithstanding any fee that would otherwise be charged for a special registration plate".

**The 2016 amendment,** effective May 18, 2016, amended the definition of "veteran", removing the requirement that a veteran be a citizen of the United States; and in Subsection D, after "'veteran' means", deleted "a citizen of the United States" and added "an individual".

**The 2011 amendment,** effective June 17, 2011, changed the percentage of disability from one hundred percent to fifty percent or more and added Subsection D to define "veteran".

**The 2003 amendment,** effective July 1, 2003, in Subsection A, inserted "including motorcycles" following "to two vehicles", inserted "or regular motorcycle registration fees" following "passenger motor vehicle", and inserted the reference to "66-3-412.1".

**The 1999 amendment,** effective July 1, 1999, in Subsection A substituted "department" for "division" in two places and inserted "for up to two vehicles" in the first sentence; deleted Subsection C, relating to eligible persons being allowed one special registration plate, redesignating the subsequent subsection accordingly; and made minor stylistic changes.

**The 1995 amendment,** effective June 16, 1995, deleted former Subsection E which barred issuance of special registration plates under this section after July 1, 1995.

**The 1994 amendment,** effective May 18, 1994, in Subsection A, added "is a veteran of the armed forces of the United States, as defined in Section 28-13-7 NMSA 1978, and" and substituted "while serving in the armed forces of the United States" for "by an enemy of the United States during any armed conflict" and "by an enemy of the United States during a period of armed conflict"; and in Subsection B, substituted "while serving in the armed forces of the United States" for "by an enemy of the United States during a period of armed conflict," and also added the substituted language at the end of the subsection.

**The 1993 amendment,** effective July 1, 1993, inserted "including the regular registration fee applicable to the passenger motor vehicle, if any" and deleted "or for the issuance of special registration plates for the New Mexico rangers and members of the New Mexico mounted patrol" from the end, in the second sentence of Subsection A; and added Subsection E.

## 66-3-412.1. Special motorcycle registration plates for armed forces veterans.

A. The department shall issue distinctive motorcycle registration plates indicating that the recipient is a veteran of the armed forces of the United States or is retired from the national guard or military reserves, if that person submits proof satisfactory to the department of honorable discharge from the armed forces or of retirement from the national guard or military reserves.

B. For a fee of seven dollars ($7.00), which is in addition to the regular motorcycle registration fees, a motorcycle owner who is a veteran of the armed forces of the United States or is retired from the national guard or military reserves may apply for the issuance of a special motorcycle registration plate as defined in Subsection A of this section. No two owners shall be issued identically lettered or numbered plates.

C. An owner shall make a new application and pay a new fee each year the owner desires to obtain a special motorcycle registration plate. The owner will have first priority on that plate for each subsequent year that the owner makes a timely and appropriate application.

D. Each armed forces veteran may elect to receive a veteran-designation decal to be placed across the top of the special motorcycle registration plate, centered above the registration number. Replacement or different veteran-designation decals shall be available for purchase from the department at a reasonable charge to be set by the secretary. The department shall furnish the following veteran-designation decals with the armed forces veteran motorcycle registration plate to a:

(1) medal of honor recipient;

(2) silver star recipient;

(3) bronze star recipient;

(4) navy cross recipient;

(5) distinguished service cross recipient;

(6) air force cross recipient;

(7) ex-prisoner of war;

(8) disabled veteran;

(9) purple heart veteran;

(10) atomic veteran;

(11) Pearl Harbor survivor;

(12) Navajo code talker;

(13) Vietnam veteran;

(14) Korean veteran;

(15) disabled Korean veteran;

(16) World War II veteran;

(17) World War I veteran;

(18) Grenada veteran;

(19) Panama veteran;

(20) Desert Storm veteran; or

(21) Iraqi Freedom veteran.

E. The revenue from the fee imposed pursuant to Subsection B of this section shall be retained by the department and is appropriated to the department for the manufacture and issuance of the special motorcycle registration plates for armed forces veterans.

F. A person shall not falsely represent that the person was honorably discharged from the armed forces or retired from the national guard or military reserves so as to be eligible to be issued a special registration plate pursuant to this section. A person who violates the provisions of this subsection is guilty of a penalty assessment misdemeanor.

**History:** Laws 2001, ch. 243, § 1; 2018, ch. 74, § 12.

**ANNOTATIONS**

**The 2018 amendment,** effective July 1, 2018, made it unlawful to falsely represent oneself as being honorably discharged from the armed forces or retired from the national guard or military reserves so as to be eligible to be issued a special armed forces registration plate, provided a penalty for the violation of this section, and made technical changes throughout the section; in Subsection A, after "United States", deleted "as defined in Section 28-13-7 NMSA 1978", added subparagraph (21); and added Subsection F.

## 66-3-413. Special registration plates; national guard members.

A. The department shall issue distinctive registration plates to any person who is a member of the New Mexico national guard, upon the submission by the person of proof satisfactory to the department that the person is currently a member of the guard. No fee, including the regular registration fee applicable to passenger motor vehicles, shall be collected for issuance of a special registration plate pursuant to this section.

B. A person shall not falsely represent that the person is an active member of the New Mexico national guard so as to be eligible to be issued special registration plates pursuant to this section when the person in fact is not a current member of the New Mexico national guard.

C. A person who violates the provisions of Subsection B of this section is guilty of a penalty assessment misdemeanor.

**History:** Laws 1980, ch. 45, § 1; 1987, ch. 268, § 23; 2007, ch. 176, § 1; 2018, ch. 74, § 13.

**ANNOTATIONS**

**The 2018 amendment,** effective July 1, 2018, reduced the penalty for misrepresenting oneself as an active member of the New Mexico national guard so as to be eligible to be issued a special national guard registration plate, and made technical changes throughout the section; in the catchline, added "national guard members"; in Subsection A, replaced "division" with "department" throughout the subsection; and in Subsection C, after "guilty of a", added "penalty assessment".

**The 2007 amendment,** effective June 15, 2007, provided that the regular registration fee applicable to passenger motor vehicles shall not be collected from members of the national guard who are issued distinctive registration plates.

## 66-3-414. Special registration plates for purple heart veterans.

A. The division shall issue special registration plates for up to two vehicles to any person who is a veteran and a bona fide purple heart medal recipient and who submits proof satisfactory to the division that the person has been awarded that medal, except that if a veteran is the recipient of more than two purple heart medals, the veteran shall be entitled to an additional special registration plate for each additional award of the purple heart medal. The plates shall have a distinctive design, different from the plates issued pursuant to Section 66-3-419 NMSA 1978, that emphasizes that the veteran is a purple heart recipient. No fee, including the regular registration fee applicable to the passenger motor vehicle, if any, shall be collected for the issuance of the special registration plates pursuant to this section. A person who is eligible for special registration plates pursuant to this section and also eligible for one or more special registration plates pursuant to Sections 66-3-406, 66-3-409, 66-3-411 and 66-3-412 NMSA 1978 shall be issued special registration plates pursuant to only one of those sections, the choice of which shall be made by the veteran.

B. No person shall falsely make any representation as being a purple heart veteran so as to be eligible to be issued special plates pursuant to this section when the person in fact is not a purple heart veteran.

C. Any person who violates the provisions of Subsection B of this section is guilty of a misdemeanor.

**History:** 1978 Comp., § 66-3-414, enacted by Laws 1987, ch. 23, § 1; 1989, ch. 77, § 1; 1993, ch. 180, § 5; 1995, ch. 8, § 4; 1997, ch. 158, § 1; 2008, ch. 32, § 1; 2014, ch. 42, § 1.

**ANNOTATIONS**

**The 2014 amendment,** effective May 21, 2014, authorized the issuance of additional purple heart special registration plates; and in Subsection A, after "the person has been awarded that medal", added "except that if a veteran is the recipient of more than two purple heart medals, the veteran shall be entitled to an additional special registration plate for each additional award of the purple heart medal".

**The 2008 amendment,** effective May 14, 2008, in Subsection A, provided that the plates shall have a distinctive design that emphasizes that the veteran is a purple heart recipient.

**The 1997 amendment,** effective June 20, 1997, in Subsection A, inserted "for up to two vehicles" following "special registration plates" in the first sentence; inserted "special registration plates pursuant to" preceding "only one" and substituted "of those sections, the choice of which shall be made by the veteran" for "special registration plate of his choice" in the third sentence; and made minor stylistic changes.

**The 1995 amendment,** effective June 16, 1995, deleted former Subsection D which barred issuance of special registration plates under this section after July 1, 1995.

**The 1993 amendment,** effective July 1, 1993, added Subsection D.

**The 1989 amendment,** effective June 16, 1989, in Subsection A, substituted "division" for "motor vehicle division of the transportation department" near the beginning of the first sentence and made minor stylistic changes in that sentence and substituted "including" for "in addition to" in the second sentence.

## 66-3-415. Special registration plates; Pearl Harbor survivors.

A. The department shall issue distinctive registration plates indicating that the recipient is a survivor of the attack on Pearl Harbor if that person submits satisfactory proof to the department indicating that the person:

(1) was a member of the United States armed forces on December 7, 1941;

(2) received an honorable discharge from the United States armed forces; and

(3) was on station on December 7, 1941 during the hours of 7:55 a.m. to 9:45 a.m. Hawaii time at Pearl Harbor, the island of Oahu, or offshore at a distance not exceeding three miles.

B. The department shall confirm satisfactory proof with the New Mexico chapter of the Pearl Harbor survivors association.

C. No fee other than the registration fee applicable to the passenger motor vehicle, if any, shall be collected for the issuance of the distinctive registration plate pursuant to this section.

D. The recipient of a distinctive plate issued pursuant to this section shall be issued replacement plates upon request and without charge if the plate is lost, stolen or mutilated.

E. A person eligible for a distinctive registration plate pursuant to this section and also eligible for one or more special or distinctive registration plates pursuant to Sections 66-3-406, 66-3-409, 66-3-411, 66-3-412 and 66-3-414 NMSA 1978 shall be issued only one special or distinctive registration plate of the person's choice.

F. A person shall not falsely represent that the person is a survivor of the attack on Pearl Harbor so as to be eligible to be issued distinctive plates pursuant to this section when that person in fact is not a survivor of the attack on Pearl Harbor.

G. A person who violates the provisions of Subsection F of this section is guilty of a penalty assessment misdemeanor.

**History:** 1978 Comp., § 66-3-415, enacted by Laws 1989, ch. 162, § 1; 1993, ch. 180, § 6; 1995, ch. 8, § 5; 2018, ch. 74, § 14.

## ANNOTATIONS

**The 2018 amendment,** effective July 1, 2018, reduced the penalty for falsely representing oneself as a survivor of the attack on Pearl Harbor so as to be eligible to be issued a distinctive registration plate pursuant to this section, and made technical changes; replaced "division" with "department" throughout the section; and in Subsection G, after "guilty of a", added "penalty assessment", and after "misdemeanor", deleted "and shall be punished by a fine of not less than one hundred dollars ($100) or more than one thousand dollars ($1,000) or by imprisonment for a definite term of less than one year or both".

**The 1995 amendment,** effective June 16, 1995, deleted former Subsection H which barred issuance of special registration plates under this section after July 1, 1995.

**The 1993 amendment,** effective July 1, 1993, made stylistic changes in Subsections C and D; substituted "66-3-412 and 66-3-414 NMSA 1978" for "and 66-3-412 NMSA 1978" in Subsection E; and added Subsection H.

## 66-3-416. Special collegiate registration plate; procedures; fee.

A. The division shall establish and issue special collegiate registration plates in accordance with the provisions of this section and shall adopt and promulgate procedures for application for and issuance of such special collegiate registration plates.

B. Any state-supported higher educational institution in New Mexico may request that the division issue a special collegiate registration plate for that institution. Upon that request, the division, with the advice and consultation of the higher educational institution, shall determine the color and design of the registration plate and provide for its issuance.

C. For a fee of thirty-five dollars ($35.00), which fee shall be in addition to the regular motor vehicle registration fees, any owner of a motor vehicle may apply for the issuance of a special collegiate registration plate. The owner of a motor vehicle shall apply and pay a fee each year that he wishes to retain and renew his special collegiate registration plate.

D. The revenue from the special collegiate registration plates shall be distributed as follows:

(1) ten dollars ($10.00) of the fee collected for each registration plate shall be retained by the division in the seventy-eighth and seventy-ninth fiscal years and is appropriated to the division for the manufacture and issuance of the registration plates. Thereafter, that amount of each fee shall be paid to the state treasurer for credit to the motor vehicle suspense fund for distribution in accordance with Section 66-6-23 NMSA 1978; and

(2) twenty-five dollars ($25.00) of the fee collected for each registration plate shall be distributed to the higher educational institution for which the registration plate is issued.

E. Revenues received by each higher educational institution from special collegiate registration plate fees are appropriated to the higher educational institutions to carry out any purpose of that institution.

**History:** Laws 1989, ch. 360, § 1.

## 66-3-417. Radio station licensees; special registration plates; fee.

A. Any applicant who is a resident of this state who holds an official commercial or amateur radio station license in good standing issued by the federal communications

commission or who is a bona fide employee of such license holder shall, upon compliance with all laws of this state relating to registration and the licensing of motor vehicles and drivers, be furnished with a registration plate for the motor vehicle as prescribed by law, upon which:

(1) in lieu of the numbers required for identification, shall be inscribed the official call letters of the applicant as assigned by the federal communications commission;

(2) the official call letters shall be inscribed as internationally recognized call letters, including the number zero with a diagonal line drawn across the number from the upper right of the number down to the lower left of the number; and

(3) the words "amateur radio operator" shall be inscribed on the registration plate upon request of the applicant.

B. The licensee of the commercial or amateur radio station shall certify to the secretary the names of bona fide personnel eligible to receive such special registration plates. The applicant shall pay, in addition to the registration tax required by law, the sum of three dollars ($3.00) for the special registration plate, which additional sum shall be deposited by the secretary with the state treasurer to be credited to the state road fund. At the time of delivery of the special registration plate, the applicant shall surrender the current registration plate issued for the motor vehicle. This provision for the issuance of a special registration plate shall apply only if the applicant's motor vehicle is already registered in New Mexico so that the applicant has a valid regular New Mexico registration plate issued for that motor vehicle under which to operate during the time it will take to have the necessary special registration plate made. The secretary may make such reasonable regulations governing the use of the special registration plate as will assure the full compliance by the owner and holder of the special plate with all existing laws governing the registration, transfer and use of motor vehicles. When the ownership of the motor vehicle for which the special registration plate has been furnished by the secretary changes from one person to another, the special registration plate authorized in this section shall be promptly removed from the motor vehicle by the seller and returned to the secretary, at which time the seller or the buyer of the motor vehicle is entitled to receive a registration plate for the motor vehicle. A seller who fails to remove and return the special registration plate as required in this subsection is guilty of a penalty assessment misdemeanor. The purpose for the issuance of the special registration plate is to readily identify personnel in aid of the performance of necessary duties for civil defense in the communications field.

**History:** 1978 Comp., § 66-3-604, enacted by Laws 1986, ch. 45, § 2; 1989, ch. 100, § 1; recompiled as 66-3-417 by Laws 1990, ch. 120, § 43; 2018, ch. 74, § 15.

## ANNOTATIONS

**Repeals.** — Laws 1985, ch. 148, § 2 repealed the former 66-3-604 NMSA 1978, as enacted by Laws 1978, ch. 35, § 99, with similar provisions relating to radio station licensees and special license plates, effective July 1, 1985.

**The 2018 amendment,** effective July 1, 2018, made it unlawful to fail to remove and return a special registration plate as required in this section, provided a penalty, and made technical changes throughout the section; replaced "director" with "secretary" throughout the section; and in Subsection B, after "entitled to receive a registration plate for the motor vehicle", added "A seller who fails to remove and return the special registration plate as required in this subsection is guilty of a penalty assessment misdemeanor".

**The 1989 amendment,** effective June 16, 1989, restructured the formerly undesignated first sentence as the introductory paragraph and Paragraph (1) of Subsection A and added Paragraphs (2) and (3) of that subsection, and designated the formerly undesignated second through eighth sentences as Subsection B.

## 66-3-418. Purpose.

The purpose of providing special registration plates for veterans of the armed forces is to allow veterans to be publicly recognized and to enable veterans to support the activities of the veterans' services department by annually purchasing such license plates in addition to paying the regular motor vehicle registration fees.

**History:** Laws 1990, ch. 46, § 1; 2004, ch. 19, § 28.

**ANNOTATIONS**

**The 2004 amendment,** effective May 19, 2004, amended this section to change "veterans' service commission" to "veterans' services department".

## 66-3-419. Special registration plates; armed forces veterans.

A. The department shall issue distinctive registration plates indicating that the recipient is a veteran of the armed forces of the United States or is retired from the national guard or military reserves if that person submits proof satisfactory to the department of honorable discharge from the armed forces or of retirement from the national guard or military reserves.

B. For a fee of fifteen dollars ($15.00), which is in addition to the regular motor vehicle registration fees, any motor vehicle owner who is a veteran of the armed forces of the United States or is retired from the national guard or military reserves may apply for the issuance of a special registration plate, as defined in Subsection A of this section. No two owners shall be issued identically lettered or numbered plates.

C. The fifteen-dollar ($15.00) fee provided in Subsection B of this section shall be waived for each registration period in which a validating sticker is issued under the provisions of Section 66-3-17 NMSA 1978, in lieu of the issuance of a special armed forces veteran plate.

D. Each armed forces veteran may elect to receive a veteran-designation decal to be placed across the top of the plate, centered above the registration number. Replacement or different veteran-designation decals shall be available for purchase from the department at a reasonable charge to be set by the secretary. The department shall furnish the following veteran-designation decals with the armed forces veteran plate to a:

(1) medal of honor recipient;

(2) silver star recipient;

(3) bronze star recipient;

(4) navy cross recipient;

(5) distinguished service cross recipient;

(6) air force cross recipient;

(7) armed forces air medal recipient;

(8) ex-prisoner of war;

(9) disabled veteran;

(10) purple heart veteran;

(11) atomic veteran;

(12) Pearl Harbor survivor;

(13) Navajo code talker;

(14) Vietnam veteran;

(15) Korean veteran;

(16) disabled Korean veteran;

(17) World War II veteran;

(18) World War I veteran;

(19) Grenada veteran;

(20) Panama veteran;

(21) Desert Storm veteran; or

(22) Iraqi Freedom veteran.

E. The revenue from the special registration plates for the armed forces veterans fee imposed by Subsection B of this section shall be distributed as follows:

(1) seven dollars ($7.00) of the fee collected for each registration plate shall be retained by the department and is appropriated to the department for the manufacture and issuance of the registration plates; and

(2) eight dollars ($8.00) of the fee collected for each registration plate shall be transferred pursuant to the provisions of Subsection F of this section.

F. There is created in the state treasury the "armed forces veterans license fund". A portion of the fee collected for each special registration plate for armed forces veterans, as provided in Subsection E of this section, shall be transferred to the state treasurer for the credit of the fund. Expenditures from the fund shall be made on vouchers issued and signed by the secretary of veterans' services or the secretary's authorized representative upon warrants drawn by the department of finance and administration for the purpose of expanding services to rural areas of the state, including Native American communities and senior citizen centers. Any unexpended or unencumbered balance remaining at the end of any fiscal year in the armed forces veterans license fund shall not revert to the general fund.

G. A person shall not falsely represent that the person was honorably discharged from the armed forces or retired from the national guard or military reserves so as to be eligible to be issued a special registration plate pursuant to this section. A person who violates the provisions of this subsection is guilty of a penalty assessment misdemeanor.

**History:** Laws 1990, ch. 46, § 2; 1993, ch. 180, § 7; 1995, ch. 32, § 1; 1999, ch. 23, § 1; 2004, ch. 19, § 29; 2018, ch. 74, § 16; 2019, ch. 95, § 1.

## ANNOTATIONS

**The 2019 amendment,** effective July 1, 2019, created a special air medial license plate for individuals who have received the United States armed forces air medal for meritorious achievement while participating in aerial flight; and in Subsection D, added new Paragraph D(7) and redesignated the succeeding paragraphs accordingly.

**The 2018 amendment,** effective July 1, 2018, made it unlawful to falsely represent oneself as being honorably discharged from the armed forces or retired from the national guard or military reserves so as to be eligible to be issued a special registration plate pursuant to this section, provided a penalty, and made technical changes throughout the section; in the catchline, after "plates", deleted "for"; in Subsection A, after "United States", deleted "as defined in Section 28-13-7 NMSA 1978"; and added Subsection G.

**The 2004 amendment,** effective May 19, 2004, amended this section to add a new Paragraph (21) of Subsection D and change "director of veterans' affairs" to the "secretary of veterans' services".

**The 1999 amendment,** effective June 18, 1999, inserted "or is retired from the national guard or military reserves" in Subsections A and B; substituted "department" for "division" throughout the section; added "or of retirement from the national guard or military reserves" at the end of Subsection A; in Subsection D deleted "in lieu of the county-designation decal specified in Subsection H of Section 66-3-14 NMSA 1978" at the end of the first sentence and substituted "secretary" for "director" in the second sentence; and made minor stylistic changes.

**The 1995 amendment,** effective June 16, 1995, added Paragraphs D(5), D(6) and D(15) and redesignated the paragraphs in Subsection D accordingly.

**The 1993 amendment,** effective July 1, 1993, made a stylistic change in the second sentence of Subsection B; rewrote Subsection C; and added present Subection D, redesignating former Subsections D and E as Subsections E and F, respectively, and making related reference changes in those subsections.

## 66-3-420. Special children's artwork registration plate; procedures; fee.

A. The division shall establish and issue special registration plates featuring artwork of the children of New Mexico in accordance with the provisions of this section and shall adopt procedures for application for and issuance of the special children's artwork registration plates.

B. The children's trust fund board of trustees shall determine the color and design of the special children's artwork registration plate and shall request that the division provide for its issuance.

C. For a fee of forty dollars ($40.00), which shall be in addition to the regular motor vehicle registration fees, any owner of a motor vehicle may apply for the issuance of a special children's artwork registration plate. The owner of a motor vehicle shall apply and pay a fee each year that he wishes to retain and renew his special children's artwork registration plate.

D. The revenue from the special children's artwork registration plates shall be distributed as follows:

(1) fifteen dollars ($15.00) of the fee collected for each registration plate shall be retained by the division in the eighty-second and eighty-third fiscal years and is appropriated to the division for the manufacture and issuance of the registration plates. Thereafter, that amount of each fee shall be paid to the state treasurer for credit to the motor vehicle suspense fund for distribution in accordance with Section 66-6-23 NMSA 1978; and

(2) twenty-five dollars ($25.00) of the fee collected for each registration plate shall be distributed to the children's trust fund, for use in accordance with the provisions of Section 24-19-2 NMSA 1978.

**History:** Laws 1993, ch. 80, § 1.

## 66-3-420.1. Motorcycle registration plates to benefit the children's trust fund; procedures; fee.

A. The division shall establish and issue special motorcycle registration plates featuring artwork of the children of New Mexico and shall adopt procedures for application for and issuance of the special children's artwork motorcycle registration plates.

B. The children's trust fund board of trustees shall determine the color and design of the special children's artwork motorcycle registration plate and shall request that the division provide for its issuance.

C. For a fee of twenty dollars ($20.00), which shall be in addition to the regular motorcycle registration fees, an owner of a motorcycle may apply for the issuance of a special children's artwork motorcycle registration plate. The owner of a motorcycle shall apply and pay a fee each year to retain and renew a special children's artwork registration plate.

D. The revenue from the special children's artwork registration plates shall be distributed as follows:

(1) five dollars ($5.00) of the fee collected for each special children's artwork motorcycle registration plate shall be retained by the division in the first year of the issuance of each special children's artwork motorcycle registration plate and is appropriated to the division for the manufacture and issuance of the special children's artwork motorcycle registration plate. Thereafter, that amount of each fee shall be paid to the state treasurer for credit to the motor vehicle suspense fund for distribution in accordance with Section 66-6-23 NMSA 1978; and

(2) fifteen dollars ($15.00) of the fee collected for each special children's artwork motorcycle registration plate shall be distributed to the children's trust fund for use in accordance with the provisions of Section 24-19-2 NMSA 1978.

**History:** Laws 2005, ch. 123, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 123 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

## 66-3-421. Special registration plates; New Mexico rangers and New Mexico mounted patrol; submission of proof; penalty.

A. The department shall issue special registration plates to any person who is a New Mexico ranger or a member of the New Mexico mounted patrol upon the submission by the person of proof satisfactory to the department that the person is currently a New Mexico ranger or a member of the New Mexico mounted patrol. No fee, including the regular registration fee applicable to the passenger motor vehicle, if any, shall be collected for the issuance of the special registration plates pursuant to this section.

B. A person shall not falsely represent that the person is a New Mexico ranger or a member of the New Mexico mounted patrol so as to be eligible to be issued special registration plates pursuant to this section when the person in fact is not a New Mexico ranger or a member of the New Mexico mounted patrol.

C. A person eligible for a special registration plate provided for in this section shall only be eligible for one such plate.

D. A person who violates the provisions of Subsection B of this section is guilty of a penalty assessment misdemeanor.

**History:** Laws 1993, ch. 180, § 8; 2018, ch. 74, § 17.

**ANNOTATIONS**

**The 2018 amendment,** effective July 1, 2018, reduced the penalty for falsely representing oneself as a New Mexico ranger or a member of the New Mexico mounted patrol so as to be eligible to be issued a special registration plate pursuant to this section, and made technical changes; in Subsection A, replaced "division" with "department" throughout the subsection; and in Subsection D, after "guilty of a", added "penalty assessment".

## 66-3-422. Special registration plates; firefighters and volunteer firefighters.

A. The department shall issue special registration plates to a person employed as a New Mexico firefighter, upon the submission by the person of proof satisfactory to the department that the person is currently employed as a New Mexico firefighter, including submission of a signed consent form from the fire chief.

B. The department shall issue special registration plates to a person who is an active volunteer firefighter with a volunteer fire department recognized by the state fire marshal upon the submission by the person of proof satisfactory to the department that the person is currently an active member of a recognized volunteer fire department. Such proof shall include the submission of a signed consent form from the fire chief.

C. A person shall not falsely represent that the person is a New Mexico firefighter or volunteer firefighter if the person is not, in fact, a New Mexico firefighter or volunteer firefighter. The secretary shall determine what constitutes satisfactory proof of employment as a New Mexico firefighter or status as a volunteer firefighter.

D. A person who violates the provisions of Subsection C of this section is guilty of a penalty assessment misdemeanor.

E. A fee of twenty-five dollars ($25.00), which is in addition to the regular motor vehicle registration fee, shall be collected by the department for the original issuance of the special registration plate for New Mexico firefighters and volunteer firefighters.

F. Ten dollars ($10.00) of the fee collected pursuant to Subsection E of this section shall be retained by the department and is appropriated to the department to defray the cost of making and issuing special registration plates for New Mexico firefighters and volunteer firefighters.

G. The amount of the fee collected pursuant to this section less any amount distributed pursuant to Subsection F of this section shall be deposited in the firefighters' survivors fund.

H. The secretary shall approve the final plate design for the special registration plates for New Mexico firefighters in accordance with New Mexico law. The secretary shall approve and issue a separate and distinctive plate clearly marked as "volunteer" for issuance to volunteer firefighters.

I. When a person holding a special plate pursuant to this section ceases to be employed as a firefighter or serve as an active volunteer firefighter, the person shall immediately remove the plate from the vehicle and return it to the secretary, at which time it shall be exchanged for a regular registration plate. A person who fails to remove and return a special plate as required by the provisions of this subsection is guilty of a

penalty assessment misdemeanor. A firefighter who holds a special plate and retires may retain the special plate.

**History:** Laws 1998, ch. 21, § 1; 2000, ch. 70, § 1; 2007, ch. 154, § 1; 2018, ch. 74, § 18.

**ANNOTATIONS**

**The 2018 amendment,** effective July 1, 2018, reduced the penalty for falsely representing oneself as a firefighter or volunteer firefighter so as to be eligible to be issued a special registration plate pursuant to this section, made it unlawful to fail to remove and return a special registration plate as required in this section, provided a penalty, and made technical changes; in Subsection D, after "guilty of a", deleted "petty" and added "penalty assessment", and after "misdemeanor", deleted "and shall be sentenced pursuant to Section 31-19-1 NMSA 1978"; and in Subsection I, added "A person who fails to remove and return a special plate as required by the provisions of this subsection is guilty of a penalty assessment misdemeanor."

**The 2007 amendment**, effective July 1, 2007, amended Subsection G to provide that the amount collected pursuant to this section shall be distributed to the firefighter's survivors fund.

**The 2000 amendment,** effective May 17, 2000, revised the section to include volunteer firefighters in its provisions; added Subsection B redesignating the remaining subsections and internal references; substituted "secretary" for "director" throughout the section, and added a provision for volunteer firefighter license plates in Subsection H.

## 66-3-423. Year-of-manufacture license plates; procedures; fees.

A. The division may specially register and permit the use of year-of-manufacture license plates on motor vehicles thirty or more years old notwithstanding the provisions of Subsection B of Section 66-3-14 NMSA 1978.

B. The division shall inspect the year-of-manufacture license plate to ensure the plate is in good condition and the number on the plate is not already assigned or in use. To qualify for use, the year-of-manufacture plate shall be an authentic plate issued in New Mexico during the motor vehicle's model year.

C. For a one-time fee of twenty-five dollars ($25.00), which shall be in addition to the regular motor vehicle registration fees, any owner of a motor vehicle that is thirty or more years old may apply to the division to use a year-of-manufacture plate on his vehicle.

D. Upon the sale or transfer of a motor vehicle bearing a year-of-manufacture plate, the plate may remain with the vehicle and be transferred to the new owner upon

payment of a ten dollar ($10.00) fee in addition to the regular motor vehicle registration fees.

E. Ten dollars ($10.00) of the fee collected pursuant to Subsection C of this section shall be retained by the department and is appropriated to the department to defray the cost of processing the special year-of-manufacture registration plates.

**History:** Laws 1998, ch. 25, § 1.

## 66-3-424. Standardized special registration plates with logos.

A. Standardized special registration plates with logos may be authorized by statute to show state support for worthy public purposes. The authorizing statute shall provide for collection of fees that, at a minimum, will cover the costs to the division of development, manufacture and issuance of the special registration plates and logos.

B. Standardized special registration plates, on the standardized areas, shall:

(1) display the colors of the state flag, red lettering on a yellow background;

(2) display the phrases "New Mexico USA" and "Land of Enchantment";

(3) provide a space for applying the special registration logo, centered at the left edge of the plate, between the attachment holes, beginning one-fourth inch in from the edge of the plate and having the following dimensions: four and one-eighth inches in height and three and one-eighth inches in width; and

(4) provide a vehicle registration number, to be assigned by the division, that consists of five alphanumeric characters displayed to the right of the special logo area.

C. Special registration logos, except for the standard dimension specified in Paragraph (3) of Subsection B of this section, shall be left to the design discretion of the division, in consultation with the public purpose interest group that requests the special registration plate.

D. Standardized special registration plates with logos, when authorized by statute for a particular public purpose interest group, shall meet the requirements specified in this subsection prior to plate issuance by the division. The public purpose interest group, no later than the effective date of the authorizing statute:

(1) shall provide evidence acceptable to the division that it will generate a minimum number of prepaid applications as determined by the division for the special registration plate with logo;

(2) shall provide a prepayment to the division in an amount sufficient to cover the plate and logo cost of the initial order;

(3) shall provide a sample of the requested artwork design in a format specified by the plate manufacturer for the specialized logo; and

(4) in cases where the authorizing statute includes revenue-sharing with distribution directed to a particular group or fund, shall show that the recipient is a governmental entity or a fund authorized for the use of a governmental entity.

E. The division may promulgate rules for implementation of the provisions of this section.

**History:** 1978 Comp., § 66-3-424, enacted by Laws 2003, ch. 172, § 1; 2003, ch. 174, § 1; 2003, ch. 175, § 1; 2003, ch. 176, § 1; 2003, ch. 177, § 1; 2003, ch. 178, § 1; 2003, ch. 179, § 1; 2003, ch. 180, § 1; 2003, ch. 181, § 1; 2003, ch. 197, § 1; 2003, ch. 198, § 1; 2003, ch. 201, § 1; 2003, ch. 211, § 1; 2003, ch. 212, § 1.

**ANNOTATIONS**

**Compiler's notes.** — Laws 2003, ch. 172, § 1; ch. 174, § 1; ch. 175, § 1; ch. 176, § 1; ch. 177, § 1; ch. 178, § 1; ch. 179, § 1; ch. 180, § 1; ch. 181, § 1; ch. 197, § 1; ch. 198, § 1; ch. 201, § 1; ch. 211, § 1; and ch. 212, § 1, all approved April 6, 2003 and effective July 1, 2003, enacted virtually identical versions of this section. The section was set out as enacted by Laws 2003, ch. 212, § 1. *See* 12-1-8 NMSA 1978.

## 66-3-424.1. Special registration plates for retired New Mexico letter carriers.

A. The department shall issue a standardized special registration plate with a logo specified in Section 66-3-424 NMSA 1978 indicating that the recipient who is a retired letter carrier from the United States postal service upon the submission by the person of proof satisfactory to the department that he is a retired letter carrier. Such proof shall include the submission of a signed consent form from a postmaster.

B. A person shall not represent himself to be a retired letter carrier if that person is, in fact, not a retired letter carrier. The secretary shall determine what constitutes satisfactory proof that a person is a retired letter carrier from the United States postal service.

C. A person who violates the provisions of Subsection B of this section is guilty of a petty misdemeanor and shall be sentenced pursuant to Section 31-19-1 NMSA 1978.

D. A fee of twenty-five dollars ($25.00), which shall be in addition to the regular motor vehicle registration fee, shall be collected by the department for the original issuance of the special registration plate for retired letter carriers.

E. Ten dollars ($10.00) of the fee collected pursuant to Subsection D of this section shall be retained by the department and is appropriated to the department to defray the

cost of making and issuing special registration plates for retired letter carriers. The remaining fifteen dollars ($15.00) shall be deposited in the motor vehicle suspense fund for distribution in accordance with Section 66-6-23 NMSA 1978.

F. The secretary shall approve the final logo design for the special registration plates for retired letter carriers in accordance with New Mexico law. The secretary shall approve and issue a separate and distinctive logo clearly marked as "retired letter carrier" for issuance to retired letter carriers.

**History:** 1978 Comp., § 66-3-424.1, enacted by Laws 2003, ch. 172, § 2.

**ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 172, § 3 made this section effective January 1, 2004.

## 66-3-424.2. Repealed.

**History:** Laws 2003, ch. 174, § 2; repealed by Laws 2018, ch. 74, § 56.

**ANNOTATIONS**

**Repeals.** — Laws 2018, ch. 74, § 56 repealed 66-3-424.2 NMSA 1978, as enacted by Laws 2003, ch. 174, § 2, relating to standardized special registration plate for retired New Mexico state police officers, effective July 1, 2018. For provisions of former section, *see* the 2017 NMSA 1978 on *NMOnesource.com*.

## 66-3-424.3. Special pet care registration plates.

A. The division shall issue a standardized pet care special registration plate with a logo specified in Section 66-3-424 NMSA 1978 indicating that the recipient supports pet care.

B. The division, with the advice and consultation of animal control offices and animal shelters in communities around the state, shall determine the color and design of the pet care special registration logo and provide for its issuance.

C. For a fee of thirty-five dollars ($35.00) in addition to the regular motor vehicle registration fees, an owner of a motor vehicle may apply for the issuance of a pet care special registration plate. The owner of a motor vehicle shall apply and pay the fee each year that the owner wishes to retain and renew a pet care special registration plate.

D. The revenue from the pet care special registration plates shall be distributed as follows:

(1) ten dollars ($10.00) of the fee collected for each pet care special registration plate shall be retained by and is appropriated to the division for the manufacture and issuance of the registration plates; and

(2) twenty-five dollars ($25.00) of the fee collected for each pet care special registration plate shall be paid to the state treasurer for credit to the animal care and facility fund, statewide spay and neuter subaccount.

**History:** 1978 Comp., § 66-3-424.1, enacted by Laws 2003, ch. 175, § 2; 2009, ch. 192, § 1; 2015, ch. 82, § 2.

**ANNOTATIONS**

**Compiler's notes.** — This section was originally enacted as 66-3-424.1 NMSA 1978, but was renumbered as 66-3-424.3 NMSA 1978 by the compiler to accommodate a similarly numbered section enacted by an earlier 2003 act.

**The 2015 amendment,** effective July 1, 2015, directed that certain revenue from the pet care special registration plate be distributed to the statewide spay and neuter subaccount; in Subsection D, Paragraph (2), after "animal care and facility fund", added "statewide spay and neuter subaccount".

**The 2009 amendment,** effective July 1, 2009, in Paragraph (2) of Subsection D, after "credit to the", deleted "motor vehicle suspense fund for distribution in accordance with Section 66-6-23 NMSA 1978" and added "animal care and facility fund".

## 66-3-424.4. Standardized special registration plates; retired members of the New Mexico national guard.

A. The department shall issue a standardized special registration plate with a logo specified in Section 66-3-424 NMSA 1978 indicating that the recipient is a person who is a retired member of the New Mexico national guard upon submission by the person of proof satisfactory to the department that the person is a retired member of the guard.

B. A person shall not falsely represent that the person is a retired member of the New Mexico national guard if that person is not in fact a retired member of the guard.

C. A person who violates the provisions of Subsection B of this section is guilty of a penalty assessment misdemeanor.

D. A fee of twenty-five dollars ($25.00), which is in addition to the regular motor vehicle registration fee, shall be collected by the department for the original issuance of the special registration plate for retired members of the New Mexico national guard.

E. Ten dollars ($10.00) of the fee collected pursuant to Subsection D of this section shall be retained by the department and is appropriated to the department to defray the

cost of making and issuing special registration plates for retired members of the New Mexico national guard.

F. The amount of the fee collected pursuant to Subsection D of this section less any amount distributed pursuant to Subsection E of this section shall be deposited in the motor vehicle suspense fund for distribution pursuant to Section 66-6-23 NMSA 1978.

G. The secretary shall approve the final logo design for the special registration plate for retired members of the New Mexico national guard.

**History:** 1978 Comp., § 66-3-424.1, enacted by Laws 2003, ch. 176, § 2; 2018, ch. 74, § 19.

**ANNOTATIONS**

**Compiler's notes.** — This section was originally enacted as 66-3-424.1 NMSA 1978, but was renumbered as 66-3-424.4 NMSA 1978 by the compiler to accommodate a similarly numbered section enacted by an earlier 2003 act.

**The 2018 amendment,** effective July 1, 2018, reduced the penalty for falsely representing oneself as a retired member of the New Mexico national guard to a penalty assessment misdemeanor, and made technical changes; in the catchline, deleted "plate for" and added "plates"; replaced "division" with "department" throughout the section; and in Subsection C, after "guilty of a", added "penalty assessment", and after "misdemeanor", deleted "and shall be sentenced pursuant to Section 31-19-1 NMSA 1978".

## 66-3-424.5. Special registration plates; New Mexico members of the fraternal order of police.

A. The department shall issue a standardized special registration plate with a logo specified in Section 66-3-424 NMSA 1978 indicating that the recipient is a New Mexico member of the fraternal order of police.

B. A person shall not falsely represent that the person is a New Mexico member of the fraternal order of police if the person is, in fact, not a New Mexico member of the fraternal order of police. The secretary shall determine what constitutes satisfactory proof.

C. A person who violates the provisions of Subsection B of this section is guilty of a penalty assessment misdemeanor.

D. A fee of twenty-five dollars ($25.00), which is in addition to the regular motor vehicle registration fee, shall be collected by the department for the original issuance of the special registration plate for a New Mexico member of the fraternal order of police.

E. Ten dollars ($10.00) of the fee collected pursuant to Subsection D of this section shall be retained by the department and is appropriated to the department to defray the cost of making and issuing a special registration plate for a New Mexico member of the fraternal order of police.

F. The amount of the fee collected pursuant to this section less any amount distributed pursuant to Subsection E of this section shall be deposited in the motor vehicle suspense fund for distribution in accordance with Section 66-6-23 NMSA 1978.

G. The secretary shall approve the final logo design for the special registration plates for New Mexico members of the fraternal order of police.

H. When a person holding a special plate ceases to be a New Mexico member of the fraternal order of police, the person shall immediately remove the plate from the vehicle and return it to the secretary, at which time it shall be exchanged for a regular registration plate. A person who fails to remove and return a special plate as required by the provisions of this subsection is guilty of a penalty assessment misdemeanor.

**History:** 1978 Comp., § 66-3-424.1, enacted by Laws 2003, ch. 177, § 2; 2018, ch. 74, § 20.

**ANNOTATIONS**

**Compiler's notes.** — This section was originally enacted as 66-3-424.1 NMSA 1978, but was renumbered as 66-3-424.5 NMSA 1978 by the compiler to accommodate a similarly numbered section enacted by an earlier 2003 act.

**The 2018 amendment,** effective July 1, 2018, reduced the penalty for falsely representing oneself as a New Mexico member of the fraternal order of police to a penalty assessment misdemeanor, made it unlawful to fail to remove and return a special registration plate as required in this section, provided a penalty, and made technical changes; in Subsection C, after "guilty of a", deleted "petty" and added "penalty assessment" and after "misdemeanor", deleted "and shall be sentenced pursuant to Section 31-19-1 NMSA 1978"; and in Subsection H, added "A person who fails to remove and return a special plate as required by the provisions of this subsection is guilty of a penalty assessment misdemeanor.".

## 66-3-424.6. Special wildlife artwork registration plates; procedures; fee.

A. The department shall establish and issue a standardized special registration plate with a logo specified in Section 66-3-424 NMSA 1978 featuring artwork of New Mexico wildlife for any private motor vehicle except a motorcycle. The department shall adopt procedures for application for and issuance of the special wildlife artwork registration plates.

B. The director of the department of game and fish shall designate a "share with wildlife" logo design committee that shall recommend to the director the color and design of the special wildlife artwork logo. The director in cooperation with the secretary shall determine the design of the special wildlife artwork logo. No personalized or vanity design variation of the special wildlife artwork registration plates shall be issued.

C. For a fee of twenty-five dollars ($25.00), which shall be in addition to the regular motor vehicle registration fees, an owner of a motor vehicle may apply for the issuance of a special wildlife artwork registration plate. The owner of a motor vehicle shall apply for the plate and pay the twenty-five-dollar ($25.00) fee for the first year and ten dollars ($10.00) for each subsequent year if he wishes to retain and renew the special wildlife artwork registration plate.

D. The revenue from the additional fee for a special wildlife artwork registration plate shall be distributed as follows:

(1) ten dollars ($10.00) of the initial fee collected shall be retained by the division and is appropriated to the division to defray the cost of making and issuing special registration plates for wildlife artwork; and

(2) fifteen dollars ($15.00) of the initial fee and the entire renewal fee collected shall be distributed to the share with wildlife program of the game protection fund.

**History:** 1978 Comp., § 66-3-424.1, enacted by Laws 2003, ch. 178 § 2; 2004, ch. 59, § 9.

**ANNOTATIONS**

**Compiler's notes.** — This section was originally enacted as 66-3-424.1 NMSA 1978, but was renumbered as 66-3-424.6 NMSA 1978 by the compiler to accommodate a similarly numbered section enacted by an earlier 2003 act.

**The 2004 amendment,** effective March 4, 2004, amended Paragraph (1) of Subsection D to delete "paid to the state treasurer for credit to the motor vehicle suspense fund . . ." and inserted in its place: "retained by the division and is appropriated to the division to defray the cost of making and issuing special registration plates for wildlife artwork".

## 66-3-424.7. Registration plates; members of the civil air patrol, New Mexico wing.

A. The department shall issue a standardized special registration plate with a logo specified in Section 66-3-424 NMSA 1978 indicating that the recipient is a member of the civil air patrol, New Mexico wing, upon the submission by the person of proof satisfactory to the department that the person is a member of the civil air patrol, New

Mexico wing. Such proof shall include the submission of a signed consent form from the civil air patrol, New Mexico wing.

B. A person shall not falsely represent that the person is a member of the civil air patrol, New Mexico wing, if that person is, in fact, not a member of the civil air patrol, New Mexico wing. The secretary shall determine what constitutes satisfactory proof that a person is a member of the civil air patrol, New Mexico wing.

C. A person who violates the provisions of Subsection B of this section is guilty of a penalty assessment misdemeanor.

D. A fee of twenty-five dollars ($25.00), which is in addition to the regular motor vehicle registration fee, shall be collected by the department for the original issuance of the special registration plate for a member of the civil air patrol, New Mexico wing.

E. Ten dollars ($10.00) of the fee collected pursuant to Subsection D of this section shall be retained by the department and is appropriated to the department to defray the cost of making and issuing special registration plates for members of the civil air patrol, New Mexico wing. The remaining fifteen dollars ($15.00) shall be deposited in the motor vehicle suspense fund for distribution in accordance with Section 66-6-23 NMSA 1978.

F. The secretary shall approve the final logo design for the special registration plates for members of the civil air patrol, New Mexico wing, in accordance with New Mexico law. The secretary shall approve and issue a separate and distinctive logo clearly marked as "civil air patrol" for issuance to members of the civil air patrol, New Mexico wing.

**History:** 1978 Comp., § 66-3-424.1, enacted by Laws 2003, ch. 179, § 2; 2018, ch. 74, § 21.

**ANNOTATIONS**

**Compiler's notes.** — This section was originally enacted as 66-3-424.1 NMSA 1978, but was renumbered as 66-3-424.7 NMSA 1978 by the compiler to accommodate a similarly numbered section enacted by an earlier 2003 act.

**The 2018 amendment,** effective July 1, 2018, reduced the penalty for falsely representing oneself as a member of the civil air patrol, New Mexico wing to a penalty assessment misdemeanor, and made technical changes; and in Subsection C , after "guilty of a", deleted "petty" and added "penalty assessment", and after "misdemeanor", deleted "and shall be sentenced pursuant to Section 31-19-1 NMSA 1978".

## 66-3-424.8. Special route 66 commemorative registration plate.

A. The division shall issue a standardized special registration plate with a logo specified in Section 66-3-424 NMSA 1978 commemorating route 66.

B. For a fee of thirty-five dollars ($35.00), which shall be in addition to the regular motor vehicle registration fees, the owner of a vehicle may apply for issuance of a special route 66 commemorative registration plate. The owner shall apply and pay the fee each year to retain and renew the special route 66 commemorative registration plate.

C. Revenue from the additional fee for a special route 66 commemorative registration plate shall be distributed as follows:

(1) ten dollars ($10.00) of the additional fee collected shall be retained by and is appropriated to the department to defray the cost of making and issuing the special registration plate with route 66 logo; and

(2) twenty-five dollars ($25.00) of the additional fee shall be distributed to and is appropriated to the state highway and transportation department for the purpose of funding the revitalization and preservation of historic route 66 in New Mexico pursuant to the national scenic byways program.

**History:** 1978 Comp., § 66-3-424.1, enacted by Laws 2003, ch. 180, § 2.

**ANNOTATIONS**

**Compiler's notes.** — This section was originally enacted as 66-3-424.1 NMSA 1978, but was renumbered as 66-3-424.8 NMSA 1978 by the compiler to accommodate a similarly numbered section enacted by an earlier 2003 act.

**Effective dates.** — Laws 2003, ch. 180, § 3 made this section effective on January 1, 2004.

## 66-3-424.9. Standardized special registration plates; retired firefighters.

A. The department shall issue a standardized special registration plate with a logo specified in Section 66-3-424 NMSA 1978 indicating that the recipient is a person who is a retired New Mexico firefighter upon submission by the person of proof satisfactory to the department that the person has retired from active employment as a firefighter.

B. A person shall not falsely represent that the person is a retired New Mexico firefighter if the person is not, in fact, a retired New Mexico firefighter. The secretary shall determine what constitutes proof of previous active employment as a firefighter and proof of retirement.

C. A person who violates the provisions of Subsection B of this section is guilty of a penalty assessment misdemeanor.

D. A fee of twenty-five dollars ($25.00), which is in addition to the regular motor vehicle registration fee, shall be collected by the department for the original issuance of the special registration plate for retired New Mexico firefighters.

E. Ten dollars ($10.00) of the fee collected pursuant to Subsection D of this section shall be retained by the department and is appropriated to the department to defray the cost of making and issuing special registration plates for retired New Mexico firefighters.

F. The amount of the fee collected pursuant to this section less any amount distributed pursuant to Subsection E of this section shall be deposited in the motor vehicle suspense fund for distribution in accordance with Section 66-6-23 NMSA 1978.

G. The secretary shall approve the final logo design for the special registration plates for retired New Mexico firefighters.

**History:** 1978 Comp., § 66-3-424.1, enacted by Laws 2003, ch. 181, § 2; 2018, ch. 74, § 22.

**ANNOTATIONS**

**Compiler's notes.** — This section was originally enacted as 66-3-424.1 NMSA 1978, but was renumbered as 66-3-424.9 NMSA 1978 by the compiler to accommodate a similarly numbered section enacted by an earlier 2003 act.

**The 2018 amendment,** effective July 1, 2018, reduced the penalty for falsely representing oneself as a retired New Mexico firefighter to a penalty assessment misdemeanor, and made technical changes; in Subsection A, replaced "division" with "department" throughout the subsection; and in Subsection C, after "guilty of a", deleted "petty" and added "penalty assessment", and after "misdemeanor", deleted "and shall be sentenced pursuant to Section 31-19-1 NMSA 1978".

## 66-3-424.10. Special registration plates for armed forces retirees.

A. The department shall issue a standardized special registration plate with a logo specified in Section 66-3-424 NMSA 1978 indicating that the recipient is a retiree of the armed forces of the United States, if that person submits proof satisfactory to the department of retirement from the armed forces.

B. For a fee of fifteen dollars ($15.00), which shall be in addition to the regular motor vehicle registration fees, any motor vehicle owner who is a retiree of the armed forces of the United States may apply for the issuance of a special registration plate as defined in Subsection A of this section. No two owners shall be issued identically lettered or numbered plates.

C. The fifteen-dollar ($15.00) fee provided for in Subsection B of this section shall be waived for each registration period in which a validating sticker is issued under the

provisions of Section 66-3-17 NMSA 1978, in lieu of the issuance of a special armed forces retiree plate.

D. The revenue from the special registration plates for the armed forces retirees' fee imposed by Subsection B of this section shall be distributed as follows:

(1) seven dollars ($7.00) of the fee collected for each registration plate shall be retained by the department and is appropriated to the department for the manufacture and issuance of the registration plates; and

(2) eight dollars ($8.00) of the fee collected for each registration plate shall be paid to the state treasurer for credit to the motor vehicle suspense fund for distribution in accordance with Section 66-6-23 NMSA 1978.

**History:** 1978 Comp., § 66-3-424.1, enacted by Laws 2003, ch. 197, § 2.

**ANNOTATIONS**

**Compiler's notes.** — This section was originally enacted as 66-3-424.1 NMSA 1978, but was renumbered as 66-3-424.10 NMSA 1978 by the compiler to accommodate a similarly numbered section enacted by an earlier 2003 act.

**Effective dates.** — Laws 2003, ch. 197, § 4 made this section effective on January 1, 2004.

## 66-3-424.11. Special registration plates for active duty uniform service members.

A. The department shall issue a standardized special registration plate with a logo specified in Section 66-3-424 NMSA 1978 indicating that the recipient is an active duty uniform service member.

B. For a fee of twenty-five dollars ($25.00), which shall be in addition to the regular motor vehicle registration fees, a motor vehicle owner who is an active duty uniform service member may apply for the issuance of a special registration plate as defined in Subsection A of this section. No two owners shall be issued identically lettered or numbered plates.

C. The twenty-five dollar ($25.00) fee provided in Subsection B of this section shall be waived for each registration period in which a validating sticker is issued under the provisions of Section 66-3-17 NMSA 1978, in lieu of the issuance of a special active duty uniform service member plate.

D. The revenue from the special active duty uniform service member registration plate fee imposed by Subsection B of this section shall be distributed as follows:

(1) ten dollars ($10.00) of the fee collected for each registration plate shall be retained by the department and is appropriated to the department for the manufacture and issuance of the registration plates; and

(2) fifteen dollars ($15.00) of the fee collected for each registration plate shall be paid to the state treasurer for credit to the motor vehicle suspense fund for distribution in accordance with Section 66-6-23 NMSA 1978.

**History:** 1978 Comp., § 66-3-424.1, enacted by Laws 2003, ch. 198, § 2.

**ANNOTATIONS**

**Compiler's notes.** — This section was originally enacted as 66-3-424.1 NMSA 1978, but was renumbered as 66-3-424.11 NMSA 1978 by the compiler to accommodate a similarly numbered section enacted by an earlier 2003 act.

**Effective dates.** — Laws 2003, ch. 198, § 4 made this section effective on January 1, 2004.

## 66-3-424.12. Special registration plates for search and rescue members.

A. The department shall issue a standardized special registration plate with a logo specified in Section 66-3-424 NMSA 1978 indicating that the recipient is a search and rescue member.

B. For a fee of twenty-five dollars ($25.00), which shall be in addition to the regular motor vehicle registration fees, a motor vehicle owner who is a search and rescue member may apply for the issuance of a special registration plate as defined in Subsection A of this section. No two owners shall be issued identically lettered or numbered plates.

C. The twenty-five dollars ($25.00) fee provided in Subsection B of this section shall be waived for each registration period in which a validating sticker is issued under the provisions of Section 66-3-17 NMSA 1978, in lieu of the issuance of a special search and rescue member plate.

D. The revenue from the special search and rescue member registration plate fee imposed by Subsection B of this section shall be distributed as follows:

(1) ten dollars ($10.00) of the fee collected for each registration plate shall be retained by the department and is appropriated to the department for the manufacture and issuance of the registration plates; and

(2) fifteen dollars ($15.00) of the fee collected for each registration plate shall be paid to the state treasurer for credit to the motor vehicle suspense fund for distribution in accordance with Section 66-6-23 NMSA 1978.

**History:** 1978 Comp., § 66-3-424.1, enacted by Laws 2003, ch. 201, § 2.

**ANNOTATIONS**

**Compiler's notes.** — This section was originally enacted as 66-3-424.1 NMSA 1978, but was renumbered as 66-3-424.12 NMSA 1978 by the compiler to accommodate a similarly numbered section enacted by an earlier 2003 act.

**Effective dates.** — Laws 2003, ch. 201, § 4 made this section effective on January 1, 2004.

## 66-3-424.13. Standardized special registration plates; retired New Mexico state police officers.

A. The department shall issue a standardized special registration plate with a logo specified in Section 66-3-424 NMSA 1978 indicating that the recipient is a person who is a retired New Mexico state police officer upon submission by the person of proof satisfactory to the department that the person is a retired New Mexico state police officer. The proof shall include the submission of a retirement commission from the New Mexico state police.

B. A person shall not falsely represent that the person is a retired New Mexico state police officer if that person is, in fact, not a retired New Mexico state police officer. The secretary shall determine what constitutes satisfactory proof that a person is a retired New Mexico state police officer.

C. A person who violates the provisions of Subsection B of this section is guilty of a penalty assessment misdemeanor.

D. A fee of twenty-five dollars ($25.00), which is in addition to the regular motor vehicle registration fee, shall be collected by the department for the original issuance of the special registration plate for retired New Mexico state police officers.

E. Ten dollars ($10.00) of the fee collected pursuant to Subsection D of this section shall be retained by the department and is appropriated to the department to defray the cost of making and issuing special registration plates for retired New Mexico state police officers. The remaining fifteen dollars ($15.00) shall be deposited in the motor vehicle suspense fund for distribution pursuant to Section 66-6-23 NMSA 1978.

F. The secretary shall approve the final logo design for the special registration plate for retired New Mexico state police officers. The logo shall be clearly marked as "retired New Mexico state police" for issuance to retired New Mexico state police officers.

**History:** 1978 Comp., § 66-3-424.1, enacted by Laws 2003, ch. 211, § 2; 2018, ch. 74, § 23.

**ANNOTATIONS**

**Compiler's notes.** — This section was originally enacted as 66-3-424.1 NMSA 1978, but was renumbered as 66-3-424.13 NMSA 1978 by the compiler to accommodate a similarly numbered section enacted by an earlier 2003 act.

**The 2018 amendment,** effective July 1, 2018, reduced the penalty for falsely representing oneself as a retired New Mexico state police officer to a penalty assessment misdemeanor, and made technical changes; replaced "division" with "department" throughout the section; in Subsection C, after "guilty of a", deleted "petty" and added "penalty assessment", and after "misdemeanor", deleted "and shall be sentenced pursuant to Section 31-19-1 NMSA 1978"; and in Subsection F, after "'retired New Mexico state police'", added "for issuance to retired New Mexico state police officers".

## 66-3-424.14. Special registration plates; New Mexico high school rodeo association.

A. The division shall issue a standardized special registration plate with a logo specified in Section 66-3-424 NMSA 1978 indicating support for the New Mexico high school rodeo association.

B. The owner of a motor vehicle may apply for the issuance of a standardized special New Mexico high school rodeo association registration plate with a logo pursuant to the procedures of the division. The owner shall pay a fee of thirty-five dollars ($35.00) for initial issuance and the same fee for each subsequent year in which he wishes to retain and renew his special plate. The fee is in addition to regular applicable motor vehicle registration fees.

C. The revenue from issuance of special New Mexico high school rodeo association registration plates shall be distributed as follows:

(1) ten dollars ($10.00) of the fee collected for each registration plate shall be retained by the division and is appropriated to the division for the manufacture and issuance of the registration plates; and

(2) twenty-five dollars ($25.00) of the fee collected for each registration plate shall be distributed to the New Mexico high school rodeo association to be used in its scholarship program.

**History:** 1978 Comp., § 66-3-424.1, enacted by Laws 2003, ch. 212, § 2.

**ANNOTATIONS**

**Compiler's notes.** — This section was originally enacted as 66-3-424.1 NMSA 1978, but was renumbered as 66-3-424.14 NMSA 1978 by the compiler to accommodate a similarly numbered section enacted by an earlier 2003 act.

**Effective dates.** — Laws 2003, ch. 212, § 3 made this section effective on January 1, 2004.

## 66-3-424.15. Special organ donation awareness registration plate; procedures; fee.

A. The division shall establish and issue special registration plates pursuant to Section 66-3-424 NMSA 1978 with a logo promoting awareness about the urgent need for organ and tissue donation in New Mexico and shall adopt procedures for application for and issuance of the special organ donation awareness registration plates.

B. The division shall determine the design of the logo for the organ donation awareness registration plate in consultation with New Mexico donor services and other organizations with the purpose of promoting organ and tissue donation and education.

C. For a one-time fee of ten dollars ($10.00), which shall be in addition to the regular motor vehicle registration fees, an owner of a motor vehicle may apply for the issuance of a special organ donation awareness registration plate. Thereafter, the owner of the motor vehicle shall pay the regular motor vehicle registration fees each year to retain and renew the special organ donation awareness registration plate.

D. Of the revenue from the special organ donation awareness registration plates, the ten-dollar ($10.00) fee collected for each registration plate shall be retained by the division and is appropriated to the division for the manufacture and issuance of the registration plates.

**History:** Laws 2005, ch. 112, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 112 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

## 66-3-424.16. Special registration plates; emergency medical technicians.

A. The department shall issue a standardized special registration plate with a logo specified in Section 66-3-424 NMSA 1978 indicating that the recipient is an emergency medical technician.

B. A person shall not falsely represent that the person is an emergency medical technician if the person is, in fact, not an emergency medical technician licensed in New Mexico. The secretary shall determine what constitutes satisfactory proof.

C. A person who violates the provisions of Subsection B of this section is guilty of a penalty assessment misdemeanor.

D. A fee of twenty-five dollars ($25.00), which shall be in addition to the regular motor vehicle registration fee, shall be collected by the department for the original issuance of the special registration plate for an emergency medical technician.

E. Ten dollars ($10.00) of the fee collected pursuant to Subsection D of this section shall be retained by the department and is appropriated to the department to defray the cost of making and issuing a special registration plate for emergency medical technicians.

F. The amount of the fee collected pursuant to this section less any amount distributed pursuant to Subsection E of this section shall be deposited in the motor vehicle suspense fund for distribution in accordance with Section 66-6-23 NMSA 1978.

G. The secretary shall approve the final logo design for the special registration plate for emergency medical technicians.

H. When a person holding a special registration plate ceases to be an emergency medical technician, the person shall immediately remove the plate from the vehicle and return it to the department, at which time it shall be exchanged for a regular registration plate. A person who fails to remove and return a plate as required in this subsection is guilty of a penalty assessment misdemeanor.

**History:** Laws 2005, ch. 344, § 1; 2018, ch. 74, § 24.

**ANNOTATIONS**

**The 2018 amendment,** effective July 1, 2018, reduced the penalty for falsely representing oneself as an emergency medical technician to a penalty assessment misdemeanor, made it unlawful to fail to remove and return a special registration plate as required in this section, provided a penalty, and made technical changes; in Subsection C, after "guilty of a", deleted "petty" and added "penalty assessment", and after "misdemeanor", deleted "and shall be sentenced pursuant to Section 31-19-1 NMSA 1978"; and in Subsection H, added "A person who fails to remove and return a plate as required in this subsection is guilty of a penalty assessment misdemeanor.".

## 66-3-424.17. Special patriot registration plate.

A. The department shall issue a standardized special patriot registration plate with a logo specified in Section 66-3-424 NMSA 1978 indicating that the recipient is a patriot.

B. For a fee of twenty-five dollars ($25.00), which shall be in addition to the regular motor vehicle registration fees, a motor vehicle owner who is a patriot may apply for the issuance of a special registration plate as provided in Subsection A of this section. No two owners shall be issued identically lettered or numbered registration plates.

C. The twenty-five-dollar ($25.00) fee provided in Subsection B of this section shall be waived for each registration period in which a validating sticker is issued under the provisions of Section 66-3-17 NMSA 1978, in lieu of the issuance of a special patriot registration plate.

D. The revenue from the special patriot registration plate fee imposed by Subsection B of this section shall be distributed as follows:

(1) ten dollars ($10.00) of the fee collected for each registration plate shall be retained by the department and is appropriated to the department for the manufacture and issuance of the registration plates;

(2) seven dollars ($7.00) of the fee collected for each registration plate shall be paid to the state treasurer for credit to the motor vehicle suspense fund for distribution in accordance with Section 66-6-23 NMSA 1978; and

(3) eight dollars ($8.00) of the fee collected for each registration plate shall be paid to the state treasurer for credit to the armed forces veterans license fund for distribution pursuant to Section 66-3-419 NMSA 1978.

**History:** Laws 2006, ch. 76, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2006, ch. 76 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 17, 2006, 90 days after adjournment of the legislature.

## 66-3-424.18. Special registration plates for adoption awareness.

A. The department shall establish and issue a special registration plate pursuant to Section 66-3-424 NMSA 1978 with a logo promoting awareness of the need for adoption of children in New Mexico.

B. The department shall determine the design of the logo for the child adoption awareness special registration plate in consultation with the children, youth and families department and child adoption interest groups with the purpose of promoting child adoption.

C. A person may apply for the original issuance of a child adoption awareness special registration plate for a motor vehicle the person owns for a fee of ten dollars

($10.00) in addition to the regular motor vehicle registration fee. A person may renew a child adoption awareness special registration plate by paying only the regular motor vehicle annual registration fee.

D. The ten-dollar ($10.00) original issuance fee for a child adoption awareness special registration plate shall be retained by the department and is appropriated to the department to defray the costs of making and issuing the child adoption awareness special registration plate.

**History:** Laws 2007, ch. 87, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 87, § 2 made this section effective July 1, 2008.

## 66-3-424.19. Cumbres and Toltec scenic railroad special registration plate; procedures; fee.

A. The division shall establish and issue a standardized special registration plate with a logo specified in Section 66-3-424 NMSA 1978, featuring artwork related to the Cumbres and Toltec scenic railroad. The division shall adopt procedures for application for and issuance of the special Cumbres and Toltec scenic railroad registration plate with a logo.

B. The division, in consultation with the Cumbres and Toltec scenic railroad commission, shall determine the color and design of the special Cumbres and Toltec scenic railroad registration logo, and the division shall provide for its issuance.

C. For a fee of forty dollars ($40.00), which shall be in addition to the regular motor vehicle registration fees, any owner of a motor vehicle may apply for the issuance of a Cumbres and Toltec scenic railroad registration plate. The owner of a motor vehicle shall apply and pay a fee each year that the owner wishes to retain and renew the Cumbres and Toltec scenic railroad registration plate.

D. The revenue from the special Cumbres and Toltec scenic railroad registration plates shall be distributed as follows:

(1) fifteen dollars ($15.00) of the fee collected the first year a special Cumbres and Toltec scenic railroad registration plate is issued shall be retained by the division and is appropriated to the division for the manufacture and issuance of the registration plates. Thereafter, that amount of each fee shall be paid to the state treasurer for credit to the motor vehicle suspense fund for distribution in accordance with Section 66-6-23 NMSA 1978; and

(2) twenty-five dollars ($25.00) of the fee collected for each registration plate shall be distributed to the Cumbres and Toltec scenic railroad commission.

**History:** Laws 2007, ch. 136, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 136, § 3 makes the section effective July 1, 2008.

## 66-3-424.20. Special registration plates for women armed forces veterans.

A. The department shall issue the distinctive registration plate, "Women Veterans Serve Proudly", indicating that the recipient is a woman veteran of the armed forces of the United States, as defined in Section 9-22-3 NMSA 1978, or is retired from the national guard or military reserves, if that person submits proof satisfactory to the department of honorable discharge from the armed forces or of retirement from the national guard or military reserves.

B. For a fee of fifteen dollars ($15.00), which shall be in addition to the regular motor vehicle registration fees, any motor vehicle owner who is a woman veteran of the armed forces of the United States or is retired from the national guard or military reserves may apply for the issuance of a special registration plate as defined in Subsection A of this section. No two owners shall be issued identically lettered or numbered plates.

C. The fifteen-dollar ($15.00) fee provided in Subsection B of this section shall be waived for each registration period in which a validating sticker is issued under the provisions of Section 66-3-17 NMSA 1978, in lieu of the issuance of a special woman armed forces veteran plate.

D. The revenue from the special registration plates for the women armed forces veteran fee imposed by Subsection B of this section shall be distributed as follows:

(1) seven dollars ($7.00) of the fee collected for each registration plate shall be retained by the department and is appropriated to the department for the manufacture and issuance of the registration plates; and

(2) eight dollars ($8.00) of the fee collected for each registration plate shall be transferred to the state treasurer for credit to the armed forces veterans license fund.

**History:** Laws 2007, ch. 48, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 48, § 3, made this section effective July 1, 2008.

## 66-3-424.21. Special motorcycle registration plates for women armed forces veterans.

A. The department shall issue distinctive motorcycle registration plates indicating that the recipient is a woman veteran of the armed forces of the United States, as defined in Section 9-22-3 NMSA 1978, or is retired from the national guard or military reserves, if that person submits proof satisfactory to the department of honorable discharge from the armed forces or of retirement from the national guard or military reserves.

B. For a fee of seven dollars ($7.00), which shall be in addition to the regular motorcycle registration fees, any motorcycle owner who is a woman veteran of the armed forces of the United States or is retired from the national guard or military reserves may apply for the issuance of a special motorcycle registration plate as defined in Subsection A of this section. No two owners shall be issued identically lettered or numbered plates.

C. An owner shall make a new application and pay a new fee for each year the owner desires to obtain a special motorcycle registration plate. The owner will have first priority on that plate for each subsequent year that the owner makes a timely and appropriate application.

**History:** Laws 2007, ch. 48, § 2.

**ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 48, § 3, made this section effective July 1, 2008.

## 66-3-424.22. Special breast cancer awareness registration plate.

A. The division shall issue a standardized special registration plate with a logo as specified in Section 66-3-424 NMSA 1978 commemorating breast cancer awareness.

B. For a fee of thirty-five dollars ($35.00), which is in addition to the regular motor vehicle registration fees, the owner of a vehicle may apply for issuance of a special breast cancer awareness registration plate. The owner shall apply for and pay the fee each year to retain and renew the special breast cancer awareness registration plate.

C. Revenue from the additional fee for a special breast cancer awareness registration plate shall be distributed as follows:

(1) ten dollars ($10.00) of the additional fee collected shall be retained by and is appropriated to the department to defray the cost of making and issuing the special registration plate with a breast cancer awareness logo; and

(2) twenty-five dollars ($25.00) of the additional fee shall be distributed to and is appropriated to the department of health for the purpose of funding breast cancer screening, outreach and education.

**History:** Laws 2008, ch. 34, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2008, ch. 34 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 14, 2008, 90 days after the adjournment of the legislature.

## 66-3-424.23. Special city of Las Cruces registration plate; procedures; fee; appropriation.

A. The department shall issue standardized special "City of Las Cruces" registration plates with a logo pursuant to Section 66-3-424 NMSA 1978 indicating that the recipient is a resident of the city of Las Cruces and shall adopt procedures for application for and issuance of the special City of Las Cruces registration plate. The secretary shall approve the final logo design for the special City of Las Cruces registration plate.

B. The owner of a motor vehicle who is a resident of the city of Las Cruces may apply for the issuance of a special registration plate as provided in Subsection A of this section. The owner shall pay a fee of thirty-five dollars ($35.00) for the initial issuance of a special City of Las Cruces registration plate and the same fee for each subsequent year in which the owner wishes to retain and renew the special City of Las Cruces registration plate. The fee specified in this section is in addition to regular applicable motor vehicle registration fees. No two owners shall be issued identically lettered or numbered plates.

C. The revenue from the special City of Las Cruces registration plate fee imposed by Subsection B of this section shall be distributed as follows:

(1) ten dollars ($10.00) of the fee collected for each registration plate shall be retained by the department and is appropriated to the department for the manufacture and issuance of the registration plates; and

(2) twenty-five dollars ($25.00) of the fee collected for each registration plate shall be paid to the state treasurer and is appropriated to the city of Las Cruces recreation fund 2130.

D. When a person holding a special City of Las Cruces registration plate ceases to reside in Las Cruces, that person shall immediately remove the special City of Las Cruces registration plate from the vehicle and return it to the department, at which time it shall be exchanged for a regular registration plate.

**History:** Laws 2008, ch. 85, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2008, ch. 85 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 14, 2008, 90 days after the adjournment of the legislature.

## 66-3-424.24. Registration plates; gold star families; submission of proof; penalty.

A. The division shall issue distinctive registration plates to the surviving parent, spouse, child or sibling of a service member killed in an armed conflict with an enemy of the United States upon the submission by the person of proof satisfactory to the division that the person's parent, spouse, child, or sibling was a service member killed in an armed conflict with an enemy of the United States. The submission of a United States department of defense form 1300 or department of defense form 3 by a surviving parent, spouse, child or sibling of a service member killed in armed conflict with an enemy of the United States shall be proof satisfactory to the division that the service member was killed in armed conflict.

B. No fee, including the regular registration fee applicable to the passenger motor vehicle, if any, shall be collected for issuance of the first special registration plate issued to a surviving parent or spouse of a service member described in Subsection A of this section. No fee other than the regular registration fee applicable to the passenger motor vehicle, if any, shall be collected for issuance of three additional special registration plates issued to a surviving parent or spouse of a service member described in Subsection A of this section.

C. Except as otherwise provided in Subsection B of this section, a fee of ten dollars ($10.00), which is in addition to the regular motor vehicle registration fee, shall be collected by the division for the original issuance of a special registration plate pursuant to this section. The fee shall be retained by the division and is appropriated to the division to defray the cost of making and issuing special registration plates pursuant to this section.

D. The special registration plate issued pursuant to this section shall be known as the "gold star families" special registration plate.

E. The division, with the advice and consultation of the gold star mothers, shall determine the color and design of the gold star families registration plate and provide for its issuance.

F. No person shall falsely claim to be a surviving parent, spouse, child or sibling of a service member killed in an armed conflict with an enemy of the United States so as to be eligible to be issued special registration plates pursuant to this section.

G. Any person who violates the provisions of Subsection F of this section is guilty of a misdemeanor.

H. As used in this section:

(1) "child" includes a biological, adopted or foster child, a stepchild, a legal ward or a child of a person standing in loco parentis;

(2) "parent" includes a biological, adoptive or foster parent, a stepparent or an individual who stands in loco parentis to a child; and

(3) "sibling" includes a stepsibling and a half-sibling.

**History:** Laws 2009, ch. 88, § 1; 2018, ch. 7, § 1.

**ANNOTATIONS**

**The 2018 amendment,** effective July 1, 2018, expanded who is eligible to receive a gold star family registration plate, amended the proof required to show the motor vehicle division that the service member was killed in armed conflict, authorized a $10.00 fee to defray the cost of making and issuing gold star family registration plates, and defined "child," "parent," and "sibling" for purposes of this section; in Subsection A, deleted "Except as provided in Subsection B of this section", after "distinctive registration plates to the surviving", deleted "mother, father, stepparent or spouse" and added "parent, spouse, child or sibling", after "that the person's", deleted "son, daughter, stepchild or spouse" and added "parent, spouse, child, or sibling", and added the last sentence; deleted former Subsection B and redesignated former Subsection C as Subsection B; in Subsection B, after "first special registration plate issued to", deleted "the mother" and added "a surviving parent", and after "additional special registration plates issued to", deleted "the family" and added "a surviving parent or spouse"; added a new Subsection C; in Subsection F, after "claim to be a surviving", deleted "mother, father, stepparent or spouse" and added "parent, spouse, child or sibling"; and added Subsection H.

## 66-3-424.25. Special commemorative scouting registration plate; procedures; fee.

A. The division shall develop, establish and issue a special commemorative scouting registration plate celebrating the centennial of the boy scouts of America in consultation with the boy scouts of America and in accordance with the provisions of this section and shall adopt and promulgate rules and procedures for application for and issuance of the special commemorative scouting registration plate.

B. For a fee of ten dollars ($10.00), which fee shall be in addition to the regular motor vehicle registration fees, any owner of a motor vehicle may apply for the issuance of a special commemorative scouting registration plate. The owner of a motor vehicle

shall apply and pay a fee for a special commemorative scouting registration plate each year that the owner wishes to retain and renew the plate.

C. The revenue from the special commemorative scouting registration plates shall be distributed so that ten dollars ($10.00) of the fee collected for each registration plate shall be retained by and is appropriated to the division for the manufacture and issuance of the special commemorative scouting registration plate.

**History:** Laws 2009, ch. 89, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 89 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

## 66-3-424.26. Special Santa Fe four hundredth anniversary registration plate.

A. Except as provided in Subsection E of this section, the department shall issue a special registration plate commemorating the four hundredth anniversary of the city of Santa Fe.

B. For a fee of thirty-five dollars ($35.00), which is in addition to the regular motor vehicle registration fee, the owner of a vehicle may apply for issuance of a special Santa Fe four hundredth anniversary registration plate. Until July 1, 2012, the owner shall apply for and pay the fee each year to retain and renew the special Santa Fe four hundredth anniversary registration plate. After June 30, 2012, a person may renew a special Santa Fe four hundredth anniversary registration plate by paying only the regular motor vehicle registration fee.

C. The revenue from the additional fee for the special Santa Fe four hundredth anniversary registration plate shall be distributed as follows:

(1) ten dollars ($10.00) of the additional fee shall be retained by and is appropriated to the department to defray the cost of making and issuing the special Santa Fe four hundredth anniversary registration plate; and

(2) twenty-five dollars ($25.00) of the additional fee collected is appropriated to the local government division of the department of finance and administration to be distributed to the city of Santa Fe to commemorate the four hundredth anniversary of the city of Santa Fe.

D. The design of the special Santa Fe four hundredth anniversary registration plate shall be left to the discretion of the department in consultation with the public purpose interest group requesting the plate.

E. The department shall only issue special Santa Fe four hundredth anniversary registration plates for applications received on or before June 30, 2012.

**History:** Laws 2009, ch. 120, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 120 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

## 66-3-424.27. Special bass fishing registration plates; procedures; fee.

A. The department shall establish and issue a standardized special registration plate with a logo specified in Section 66-3-424 NMSA 1978 featuring bass fishing for any private motor vehicle except a motorcycle. The department shall adopt procedures for application for and issuance of the special bass fishing registration plates.

B. The director of the department of game and fish shall designate a "bass fishing" logo design committee that includes a bass fishing federation representative and that shall determine the design of the special wildlife artwork logo. No personalized or vanity design variation of the special bass fishing registration plates shall be issued.

C. For a fee of twenty-five dollars ($25.00), which shall be in addition to the regular motor vehicle registration fees, an owner of a motor vehicle may apply for the issuance of a special bass fishing registration plate. The owner of a motor vehicle shall apply for the plate and pay the twenty-five-dollar ($25.00) fee for the first year and ten dollars ($10.00) for each subsequent year if the owner wishes to retain and renew the special bass fishing registration plate.

D. The revenue from the additional fee for a special bass fishing registration plate shall be distributed as follows:

(1) ten dollars ($10.00) of the initial fee collected shall be retained by the division and is appropriated to the division to defray the cost of making and issuing special registration plates for bass fishing; and

(2) fifteen dollars ($15.00) of the initial fee and the entire renewal fee collected shall be distributed to the bass habitat management program of the game protection fund.

**History:** Laws 2009, ch. 85, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 85, § 2 made Laws 2009, ch. 85, § 1 effective July 1, 2010.

## 66-3-424.28. Standardized special registration plates; retired New Mexico law enforcement officers.

A. The department shall issue a standardized special registration plate with a logo specified in Section 66-3-424 NMSA 1978 indicating that the recipient is a person who is a retired New Mexico law enforcement officer upon submission by the person of proof satisfactory to the department that the person is a retired New Mexico law enforcement officer. The proof shall include the submission of a retirement commission from a New Mexico law enforcement agency.

B. A person shall not falsely represent that the person is a retired New Mexico law enforcement officer if that person is, in fact, not a retired New Mexico law enforcement officer. The secretary shall determine what constitutes satisfactory proof that a person is a retired New Mexico law enforcement officer.

C. A person who violates the provisions of Subsection B of this section is guilty of a penalty assessment misdemeanor.

D. A fee of twenty-five dollars ($25.00), which is in addition to the regular motor vehicle registration fee, shall be collected by the department for the original issuance of the special registration plate for retired New Mexico law enforcement officers.

E. Ten dollars ($10.00) of the fee collected pursuant to Subsection D of this section shall be retained by the department and is appropriated to the department to defray the cost of making and issuing special registration plates for retired New Mexico law enforcement officers. The remaining fifteen dollars ($15.00) shall be deposited in the motor vehicle suspense fund for distribution pursuant to Section 66-6-23 NMSA 1978.

F. The secretary shall approve the final logo design for the special registration plate for retired New Mexico law enforcement officers. The logo shall be clearly marked as "retired New Mexico law enforcement officer" for issuance to retired New Mexico law enforcement officers.

**History:** Laws 2009, ch. 86, § 1; 2018, ch. 74, § 25.

**ANNOTATIONS**

**The 2018 amendment,** effective July 1, 2018, reduced the penalty for falsely representing oneself as a retired New Mexico law enforcement officer to a penalty assessment misdemeanor, and made technical changes; replaced "division" with "department" throughout the section; and in Subsection C, after "guilty of a", deleted "petty" and added "penalty assessment", and after "misdemeanor", deleted "and shall be sentenced pursuant to Section 31-19-1 NMSA 1978".

## 66-3-424.29. Special New Mexico state 4-H registration plate.

A. The division shall issue a standardized special registration plate with a logo specified in Section 66-3-424 NMSA 1978 indicating support for 4-H.

B. For a fee of thirty-five dollars ($35.00), which shall be in addition to the regular motor vehicle registration fees, the owner of a vehicle may apply for issuance of a special 4-H registration plate. The owner shall apply and pay the fee each year to retain and renew the special 4-H registration plate.

C. Revenue from the additional fee for a special 4-H registration plate shall be distributed as follows:

(1) ten dollars ($10.00) of the additional fee collected shall be retained by and is appropriated to the department to defray the cost of making and issuing the special registration plate with the 4-H logo; and

(2) twenty-five dollars ($25.00) of the additional fee shall be distributed to and is appropriated to the board of regents of New Mexico state university for the New Mexico state 4-H office and for 4-H youth programs in the state.

D. The 4-H logo shall be in accordance with federal laws or regulations of the United States department of agriculture.

**History:** Laws 2009, ch. 87, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 87, § 2 made Laws 2009, ch. 87, § 1 effective July 1, 2010.

## 66-3-424.30. Special farm and ranch community registration plate.

A. The department shall issue a standardized special registration plate with a logo as specified in Section 66-3-424 NMSA 1978 indicating support for the New Mexico farm and ranch community.

B. For a fee of thirty-five dollars ($35.00), which is in addition to the regular motor vehicle registration fees, the owner of a vehicle may apply for issuance of a special farm and ranch community registration plate. The owner shall apply for and pay the fee each year to retain and renew the special farm and ranch community registration plate.

C. The revenue from the additional fee for the special farm and ranch community registration plate shall be distributed as follows:

(1) ten dollars ($10.00) of the additional fee shall be retained by and is appropriated to the department to defray the cost of making and issuing the special farm and ranch community registration plate; and

(2) twenty-five dollars ($25.00) of the additional fee collected shall be distributed to and is appropriated to the farm and ranch heritage museum for educational programs.

**History:** Laws 2009, ch. 90, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 90, § 2 made Laws 2009, ch. 90, § 1 effective July 1, 2010.

## 66-3-424.31. Special blood donor recognition registration plate.

A. The department shall issue a standardized special registration plate with a logo as specified in Section 66-3-424 NMSA 1978 recognizing blood donors.

B. For a fee of thirty-five dollars ($35.00), which is in addition to the regular motor vehicle registration fees, the owner of a vehicle may apply for issuance of a special blood donor recognition registration plate. The owner shall apply for and pay the fee each year to retain and renew the special blood donor recognition plate.

C. The revenue from the additional fee for the special blood donor recognition registration plate shall be distributed as follows:

(1) ten dollars ($10.00) of the additional fee collected shall be retained by and is appropriated to the department to defray the cost of making and issuing the special blood donor recognition registration plate; and

(2) twenty-five dollars ($25.00) of the additional fee collected shall be distributed to and is appropriated to the department of health for the purpose of funding blood donation outreach and education.

**History:** Laws 2011, ch. 7, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2011, ch. 7, § 2 made Laws 2011, ch. 7, § 1 effective July 1, 2011.

## 66-3-424.32. Special New Mexico Amigos registration plate.

A. The division shall issue a standardized special registration plate with a logo designed in accordance with Subsection C of Section 66-3-424 NMSA 1978 that indicates that the owner of a vehicle is a member of New Mexico Amigos.

B. The division shall issue the special registration plate designed pursuant to this section to a person who submits proof satisfactory to the division that the person is currently a member of New Mexico Amigos. Such proof shall include the submission of a signed consent form from the president of New Mexico Amigos.

C. No person shall falsely claim to be a member of New Mexico Amigos so as to be eligible to be issued a special registration plate pursuant to this section.

D. The division may revoke the special license plate of any person who violates the provision of Subsection C of this section.

E. A fee of ten dollars ($10.00), which is in addition to the regular motor vehicle registration fee, shall be collected by the division for the original issuance of the special registration plate for members of New Mexico Amigos. The fee shall be retained by the division and is appropriated to the division to defray the cost of making and issuing special registration plates pursuant to this section.

F. When a person holding a special New Mexico Amigos registration plate ceases to be a member of New Mexico Amigos, that person shall immediately remove the special registration plate from the person's vehicle and return it to the department; at which time, it shall be exchanged for a regular registration plate.

**History:** Laws 2015, ch. 4, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2015, ch. 4 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2015, 90 days after the adjournment of the legislature.

## 66-3-424.33. Special autism awareness registration plate.

A. The division shall issue a standardized special registration plate with a logo as specified in Section 66-3-424 NMSA 1978 commemorating autism awareness.

B. For a fee of thirty-five dollars ($35.00), which is in addition to the regular motor vehicle registration fees, the owner of a vehicle may apply for issuance of a special autism awareness registration plate. The owner shall apply for and pay the fee each year to retain and renew the special autism awareness registration plate.

C. Revenue from the additional fee for a special autism awareness registration plate shall be distributed as follows:

(1) ten dollars ($10.00) of the additional fee collected shall be retained by and is appropriated to the department to defray the cost of making and issuing the special registration plate with an autism awareness logo; and

(2) twenty-five dollars ($25.00) of the additional fee shall be distributed to and is appropriated to the department of health for the purpose of funding autism research, outreach and education.

**History:** Laws 2015, ch. 55, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2015, ch. 55 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2015, 90 days after the adjournment of the legislature.

## 66-3-424.34. Special New Mexico junior college registration plate.

A. The division shall issue a standardized special registration plate with a logo as specified in Section 66-3-424 NMSA 1978 commemorating New Mexico junior college.

B. For a fee of thirty-five dollars ($35.00), which is in addition to the regular motor vehicle registration fees, the owner of a vehicle may apply for issuance of a special New Mexico junior college registration plate. The owner shall apply for and pay the fee each year to retain and renew the special New Mexico junior college registration plate.

C. Revenue from the additional fee for a special New Mexico junior college registration plate shall be distributed as follows:

(1) ten dollars ($10.00) of the additional fee collected shall be retained by and is appropriated to the department to defray the cost of making and issuing the special registration plate with the New Mexico junior college logo; and

(2) twenty-five dollars ($25.00) of the additional fee shall be distributed to and is appropriated to the higher education department to support education and instruction programs at New Mexico junior college.

**History:** Laws 2015, ch. 154, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2015, ch. 154, § 2 made Laws 2015, ch. 154, § 1 effective July 1, 2015.

## 66-3-424.35. Honoring fallen officers special registration plate.

A. The division shall issue a standardized special registration plate with a logo designed in accordance with Subsection C of Section 66-3-424 NMSA 1978 to commemorate police officers who have died in the line of duty. The plate shall include the words "Honoring Fallen Officers".

B. A fee of ten dollars ($10.00), which is in addition to the regular motor vehicle registration fee, shall be collected by the division for the original issuance of the "Honoring Fallen Officers" special registration plate. The fee shall be retained by the division and is appropriated to the division to defray the cost of making and issuing special registration plates pursuant to this section.

**History:** Laws 2017, ch. 23, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2017, ch. 23 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 2017, 90 days after the adjournment of the legislature.

## 66-3-424.36. Off-highway motor vehicle paved road use vehicle plate.

A. The department shall issue a standardized special off-highway motor vehicle paved road use vehicle plate with a logo specified in Section 66-3-424 NMSA 1978 indicating that the recipient intends to operate an off-highway motor vehicle on paved streets or highways in accordance with the provisions of the Off-Highway Motor Vehicle Act.

B. For a fee of seven dollars ($7.00), an off-highway motor vehicle owner who wishes to indicate an intent to operate an off-highway motor vehicle on paved streets or highways in accordance with the provisions of the Off-Highway Motor Vehicle Act may apply for the issuance of a special vehicle plate as provided in Subsection A of this section. No two owners shall be issued identically lettered or numbered vehicle plates.

C. The revenue from the special off-highway motor vehicle paved road use vehicle plate fee imposed by Subsection B of this section shall be retained by the department and is appropriated to the department for the manufacture and issuance of the vehicle plates.

**History:** Laws 2017, ch. 70, § 2.

**ANNOTATIONS**

**Compiler's notes.** — Laws 2017, ch. 70, § 2, effective July 1, 2017, was erroneously compiled as 66-3-1003.1 NMSA 1978, and has been recompiled as 66-3-424.36 NMSA 1978 by the compiler.

**Effective dates.** — Laws 2017, ch. 70, § 5 made Laws 2017, ch. 70, § 2 effective July 1, 2017.

## 66-3-424.37. Special support of pollinator protection registration plate.

A. The department shall issue a standardized special registration plate in support of pollinator protection with a logo specified in Section 66-3-424 NMSA 1978 indicating that the recipient supports pollinator protection.

B. For an initial fee of twenty-five dollars ($25.00), which shall be in addition to the regular motor vehicle registration fees, a motor vehicle owner may apply for issuance of a special registration plate as provided in Subsection A of this section. For each subsequent year, the fee shall be fifteen dollars ($15.00) if the owner wishes to retain and renew the support of pollinator protection special registration plate.

C. The revenue from the fees imposed by Subsection B of this section for the support of pollinator protection special registration plate shall be distributed as follows:

(1) ten dollars ($10.00) of the initial fee collected shall be retained by the department and is appropriated to the department for the manufacture and issuance of the special registration plate; and

(2) fifteen dollars ($15.00) of the initial fee and the entire renewal fee collected shall be distributed to and are appropriated to the department of transportation for the purpose of funding pollinator protection activities, including roadside vegetation planting, educational signage and demonstration gardens in areas within the department's jurisdiction.

**History:** Laws 2019, ch. 162, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2019, ch. 162 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

## 66-3-424.38. Childhood cancer family support special registration plate.

A. The department shall issue a standardized childhood cancer family support special registration plate with a logo specified in Section 66-3-424 NMSA 1978 indicating that the recipient supports families with a child with cancer.

B. For an initial fee of forty dollars ($40.00), which shall be in addition to the regular motor vehicle registration fees, a motor vehicle owner may apply for issuance of a special registration plate as provided in Subsection A of this section. The vehicle owner shall pay a renewal fee of forty dollars ($40.00) each year to retain and renew the childhood cancer family support special registration plate.

C. The revenue from the fees imposed by Subsection B of this section for the childhood cancer family support special registration plate shall be distributed as follows:

(1) ten dollars ($10.00) of the initial fee collected shall be retained by the department and is appropriated to the department for the manufacture and issuance of the special registration plate; and

(2) thirty dollars ($30.00) of the initial fee and the entire renewal fee collected shall be distributed to and are appropriated to the department of health for childhood cancer awareness, outreach and education.

D. Beginning on July 1, 2023, and on July 1 of each subsequent year, the department shall compare the number of childhood cancer family support special registration plates issued or registration renewals for those plates in the previous fiscal year with the average of the number of such plates issued in fiscal years 2021 and 2022.

E. By September 1 of a fiscal year in which the department determines that the number of childhood cancer family support special registration plates issued or registration renewals for those plates in the previous fiscal year is less than fifty percent of the average number of such plates issued in fiscal years 2021 and 2022, the department shall stop issuing childhood cancer family support special registration plates.

**History:** Laws 2020, ch. 76, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2020, ch. 76, § 2 made Laws 2020, ch. 76, § 1 effective July 1, 2020.

## 66-3-424.39. Special concerns of police survivors, C.O.P.S., registration plate.

A. The division shall issue a standardized concerns of police survivors, C.O.P.S., special registration plate with a logo designed pursuant to Section 66-3-424 NMSA 1978 to recognize the families and friends of law enforcement officers killed in the line of duty.

B. For an initial fee of forty-five dollars ($45.00), which shall be in addition to the regular motor vehicle registration fees, the owner of a vehicle may apply for issuance of a concerns of police survivors, C.O.P.S., special registration plate. The vehicle owner shall pay a renewal fee of thirty-five dollars ($35.00) each year to retain and renew the concerns of police survivors, C.O.P.S., special registration plate.

C. The revenue from the additional fee for a concerns of police survivors, C.O.P.S., special registration plate shall be distributed as follows:

(1) ten dollars ($10.00) of the initial fee collected shall be retained by and is appropriated to the department to defray the cost of making and issuing the special registration plate with the concerns of police survivors, C.O.P.S., logo; and

(2) thirty-five dollars ($35.00) of the initial registration fee and the entire thirty-five dollars ($35.00) of subsequent renewal fees shall be distributed to the law enforcement protection fund.

D. Beginning on July 1, 2026, and on July 1 of each subsequent year, the department shall compare the number of concerns of police survivors, C.O.P.S., special registration plates issued or registration renewals for those plates in the previous fiscal year with the average of the number of such plates issued in fiscal years 2024 and 2025.

E. By September 1 of a fiscal year in which the department determines that the number of concerns of police survivors, C.O.P.S., special registration plates issued or registration renewals for those plates in the previous fiscal year is less than fifty percent of the average number of such plates issued in fiscal years 2024 and 2025, the department shall stop issuing concerns of police survivors, C.O.P.S., special registration plates.

**History:** Laws 2023, ch. 57, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2023, ch. 57, § 2 made Laws 2023, ch. 57, § 1 effective July 1, 2023.

## 66-3-424.40. Special look twice for motorcycles registration plate.

A. The division shall issue a standardized look twice for motorcycles special registration plate with a logo designed pursuant to Section 66-3-424 NMSA 1978 indicating that the recipient supports driver safety awareness for those who share the road and remind drivers to look twice for motorcycles.

B. For an initial fee of forty-five dollars ($45.00) that shall be in addition to the regular motor vehicle registration fees, the owner of a motor vehicle may apply for

issuance of a look twice for motorcycles safety awareness special registration plate. The vehicle owner shall pay a renewal fee of fifteen dollars ($15.00) each year to retain and renew the look twice for motorcycles special registration plate.

C. The revenue from the additional fee for a look twice for motorcycles safety awareness special registration plate shall be distributed as follows:

(1) twelve dollars ($12.00) of the initial fee collected shall be retained by and is appropriated to the department to defray the cost of making and issuing the special registration plate with the look twice for motorcycles logo; and

(2) thirty-three dollars ($33.00) of the initial registration fee and the entire fifteen dollars ($15.00) of subsequent renewal fees shall be distributed and are appropriated to the motorcycle training fund for the department of transportation to provide driver awareness education and motorcycle training statewide.

D. Beginning on July 1, 2026, and on July 1 of each subsequent year, the department shall compare the number of look twice for motorcycles safety awareness special registration plates issued or registration renewals for those plates in the previous fiscal year with the average of the number of those plates issued in fiscal years 2024 and 2025.

E. By September 1 of a fiscal year in which the department determines that the number of look twice for motorcycles safety awareness special registration plates issued or registration renewals for those plates in the previous fiscal year is less than fifty percent of the average number of those plates issued in fiscal years 2024 and 2025, the department shall stop issuing look twice for motorcycles special registration plates.

**History:** Laws 2023, ch. 73, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2023, ch. 73, § 3 made Laws 2023, ch. 73, § 1 effective July 1, 2023.

## 66-3-424.41. New Mexico miners special registration plate.

A. The division shall issue a standardized special registration plate with a logo as specified in Section 66-3-424 NMSA 1978 commemorating New Mexico miners.

B. For an initial fee of twenty dollars ($20.00), which shall be in addition to the regular motor vehicle registration fees, a motor vehicle owner may apply for issuance of a New Mexico miners special registration plate. The owner shall pay a renewal fee of twenty dollars ($20.00) each year to retain and renew the New Mexico miners special registration plate.

C. Revenue from the fees imposed by Subsection B of this section for a New Mexico miners special registration plate shall be distributed as follows:

(1) twelve dollars ($12.00) of the initial fee collected shall be retained by the department and is appropriated to the department for the manufacture and issuance of the special registration plates; and

(2) eight dollars ($8.00) of the initial fee and the entire renewal fee collected shall be distributed to the miners' hospital of New Mexico to be used for chronic illness research.

D. Beginning on July 1, 2026, and on July 1 of each subsequent year, the department shall compare the number of New Mexico miners special registration plates issued or registration renewals for those plates in the previous fiscal year with the average of the number of those plates issued in fiscal years 2024 and 2025.

E. By September 1 of a fiscal year in which the department determines that the number of New Mexico miners special registration plates issued or registration renewals for those plates in the previous fiscal year is less than fifty percent of the average number of those plates issued in fiscal years 2024 and 2025, the department shall stop issuing New Mexico miners special registration plates.

**History:** Laws 2023, ch. 73, § 2.

**ANNOTATIONS**

**Effective dates.** — Laws 2023, ch. 73, § 3 made Laws 2023, ch. 73, § 2 effective July 1, 2023.

## 66-3-424.42. Special support for the national FFA organization registration plate.

A. The division shall issue a standardized special registration plate with a logo specified in Section 66-3-424 NMSA 1978 indicating support for the national FFA organization.

B. For a fee of thirty-five dollars ($35.00), which shall be in addition to the regular motor vehicle registration fees, the owner of a vehicle may apply for issuance of a special support for the national FFA organization registration plate. The owner shall apply and pay a fee of twenty-five dollars ($25.00) each year to retain and renew the special support for the national FFA organization registration plate.

C. Revenue from the additional fees for a special support for the national FFA organization registration plate shall be distributed as follows:

(1) twelve dollars ($12.00) of the initial fee collected shall be retained by and is appropriated to the department to defray the cost of making and issuing the special registration plate with the support for the national FFA logo; and

(2) twenty-three dollars ($23.00) of the initial fee and all of the fee for retention and renewal shall be distributed and is appropriated to the board of regents of New Mexico state university for the New Mexico department of agriculture to fund statewide programs for active national FFA chapters.

D. Beginning on July 1, 2026, and on July 1 of each subsequent year, the department shall compare the number of the special support for the national FFA organization registration plates issued or renewed in the previous fiscal year with the average of the number of such plates issued in fiscal years 2024 and 2025.

E. By September 1 of a fiscal year in which the department determines that the number of special support for the national FFA organization registration plates issued or renewed in the previous fiscal year is less than fifty percent of the average number of such plates issued in fiscal years 2024 and 2025, the department shall stop issuing special support for the national FFA organization registration plates.

**History:** Laws 2023, ch. 76, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2023, ch. 76, § 2 made Laws 2023, ch. 76, § 1 effective July 1, 2023.

## 66-3-424.43. Special acequia and community ditch associations registration plate.

A. The department shall issue a standardized special registration plate with a logo as specified in Section 66-3-424 NMSA 1978 to express support for acequia and community ditch associations.

B. For an initial fee of thirty dollars ($30.00), which shall be in addition to the regular motor vehicle registration fees, an owner of a motor vehicle may apply for issuance of a special acequia and community ditch associations registration plate. The owner shall pay a renewal fee of thirty dollars ($30.00) each year to retain and renew the special acequia and community ditch associations registration plate.

C. Revenue from the fees imposed by Subsection B of this section for a special acequia and community ditch associations registration plate shall be distributed as follows:

(1) twelve dollars ($12.00) of the initial fee collected for each registration plate shall be retained by the department and is appropriated to the department for the manufacture and issuance of the special registration plates; and

(2) eighteen dollars ($18.00) of the initial fee and the entire renewal fee collected for each registration plate shall be appropriated to the acequia and community ditch fund.

D. Beginning on July 1, 2027, and on July 1 of each subsequent year, the department shall compare the number of special acequia and community ditch associations registration plates issued and renewed in the previous fiscal year with the average number of such plates issued and renewed in fiscal years 2025 and 2026. If the department determines that the number of special acequia and community ditch associations registration plates issued and renewed in the previous fiscal year is less than fifty percent of the average number of the plates issued and renewed in fiscal year 2025 or 2026, the department may stop issuing special acequia and community ditch associations registration plates.

**History:** Laws 2023, ch. 152, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2023, ch. 152, § 2 made Laws 2023, ch. 152, § 1 effective January 1, 2024.

# PART 6
# ANTI-THEFT PROVISIONS

## 66-3-501. Report of stolen and recovered vehicles or motor vehicles.

A. Every sheriff, chief of police or peace officer upon receiving reliable information that any vehicle or motor vehicle has been stolen shall immediately, but in no case later than one week after receiving the information, report the theft to the New Mexico state police or other appropriate law enforcement agency unless, prior thereto, information has been received of the recovery of the vehicle or motor vehicle. Any officer, upon receiving information that any vehicle or motor vehicle that the officer has previously reported as stolen has been recovered, shall immediately report the fact of recovery to the local sheriff's office or police department and to the New Mexico state police.

B. The requirement that the theft or recovery of a vehicle or motor vehicle be reported to the New Mexico state police is satisfied if the report is made to the national crime information center.

**History:** 1953 Comp., § 64-3-501, enacted by Laws 1978, ch. 35, § 88; 1995, ch. 135, § 15; 2009, ch. 253, § 8; 2009, ch. 261, § 8.

**ANNOTATIONS**

**Cross references.** — For the index of stolen or recovered vehicles, *see* 66-3-8, 66-3-9 NMSA 1978.

**The 2009 amendment,** effective July 1, 2009, in Subsection A, in the first sentence, after "any vehicle", deleted "registered under the Motor Vehicle Code" and added "or motor vehicle"; after "state police", added "or other appropriate law enforcement agency" and in the second sentence, after "any vehicle", deleted "which he" and added "or motor vehicle that the officer"; and in Subsection B, after "vehicle", added "or motor vehicle".

Laws 2009, ch. 253, § 8 and Laws 2009, ch. 261, § 8 enacted identical amendments to this section. The section was set out as amended by Laws 2009, ch. 261, § 8. *See* 12-1-8 NMSA 1978.

**The 1995 amendment,** effective June 16, 1995, added Subsection B, designated the existing provisions as Subsection A, substituted "under the Motor Vehicle Code" for "hereunder", and made numerous stylistic changes throughout the section.

**Sheriff need not report theft when recovered on same day.** — The sheriff is not required by the provisions of Section 64-9-1, 1953 Comp. (similar to this section) to report either the theft or recovery of a motor vehicle, recovered on the same day it was stolen and where no theft report was ever made, to the local police department or state police. *Foundation Reserve Ins. Co. v. Faust*, 1962-NMSC-176, 71 N.M. 271, 377 P.2d 681.

## 66-3-502. Reports by owners of stolen and recovered vehicles or motor vehicles.

A. The owner or person having a lien or encumbrance upon a vehicle or motor vehicle that has been stolen or embezzled may notify the New Mexico state police or other appropriate law enforcement agency of the theft or embezzlement but, in the event of an embezzlement, may make a report only after having procured the issuance of a warrant for the arrest of the person charged with the embezzlement.

B. Every owner or other person who has given any such notice shall immediately notify the New Mexico state police or the law enforcement agency that took the report of a recovery of the vehicle.

**History:** 1953 Comp., § 64-3-502, enacted by Laws 1978, ch. 35, § 89; 2009, ch. 253, § 9; 2009, ch. 261, § 9.

### ANNOTATIONS

**The 2009 amendment,** effective July 1, 2009, in Subsection A, after "encumbrance upon a", changed "registered vehicle which" to "vehicle or motor vehicle that" and after "state police", added "or other appropriate law enforcement agency"; and in Subsection B, after "state police", added "or the law enforcement agency that took the report".

Laws 2009, ch. 253, § 9 and Laws 2009, ch. 261, § 9 enacted identical amendments to this section. The section was set out as amended by Laws 2009, ch. 261, § 9. *See* 12-1-8 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Nature and extent of insured's duty to seek retrieval of stolen automobile, 9 A.L.R.4th 405.

## 66-3-503. Repealed.

### ANNOTATIONS

**Repeals.** — Laws 1995, ch. 135, § 29 repealed 66-3-503 NMSA 1978, as enacted by Laws 1978, ch. 35, § 90, relating to actions by the division on report of stolen vehicles, effective June 16, 1995. For provisions of former section, *see* the 1994 NMSA 1978 on *NMOneSource.com.*

## 66-3-504. Recompiled.

**History:** 1953 Comp., § 64-3-504, enacted by Laws 1978, ch. 35, § 91; 1998, ch. 67, § 2; 1978 Comp., § 66-3-504 recompiled as § 30-16D-1 by Laws 2009, ch. 253, § 1 and Laws 2009, ch. 261, § 1.

### ANNOTATIONS

**Recompilations.** — Laws 2009, ch. 253, § 1 and Laws 2009, ch. 261, § 1 recompiled and amended former 66-3-504 NMSA 1978, relating to unlawful taking of a vehicle or motor vehicle, as 30-16D-1 NMSA 1978, effective July 1, 2009.

## 66-3-505. Recompiled.

**History:** 1953 Comp., § 64-3-505, enacted by Laws 1978, ch. 35, § 92; 1978 Comp., § 66-3-505 recompiled and amended as § 30-16D-4 by Laws 2009, ch. 253; § 4.

### ANNOTATIONS

**Recompilations.** — Laws 2009, ch. 253, § 4 and Laws 2009, ch. 261, § 4 recompiled and amended former 66-3-505 NMSA 1978, relating to receiving or transferring stolen vehicles or motor vehicles, as 30-16D-4 NMSA 1978, effective July 1, 2009.

## 66-3-506. Recompiled.

**History:** 1953 Comp., § 64-3-506, enacted by Laws 1978, ch. 35, § 93; 1978 Comp., § 66-3-506 recompiled and amended as § 30-16D-5 by Laws 2009, ch. 253, § 5 and Laws 2009, ch. 261, § 5.

**ANNOTATIONS**

**Recompilations.** — Laws 2009, ch. 253, § 5 and Laws 2009, ch. 261, § 5 recompiled and amended former 66-3-506 NMSA 1978, relating to injuring or tampering with vehicle, as 30-16D-5 NMSA 1978, effective July 1, 2009.

## 66-3-507. Altered vehicle identification numbers; contraband.

A. Any person receiving, disposing of, offering to dispose of or having in the person's possession any vehicle, motor vehicle or motor vehicle engine or component shall make adequate inquiry and inspection to determine that no manufacturer's serial number, engine or component number or other distinguishing number or mark or identification mark or number placed under assignment of the division has been removed, defaced, covered, altered or destroyed.

B. When the inspection of a vehicle, motor vehicle or motor vehicle engine or component by any law enforcement officer indicates that the manufacturer's serial number or decal, engine or component number or other distinguishing number or mark or identification mark or number placed under assignment of the division has been removed, defaced, covered, altered or destroyed, that vehicle, motor vehicle or motor vehicle engine or component may be impounded for a period of time not to exceed ninety-six hours unless part of that time falls upon a Saturday, Sunday or a legal holiday, in which case the vehicle, motor vehicle or motor vehicle engine or component may be impounded for a period of time not to exceed six days. At the expiration of the stated time period, the vehicle, motor vehicle or motor vehicle engine or component shall be returned to the person from whom it was taken at no cost unless an ex parte order allowing continued impoundment is issued by a magistrate or district court judge after finding that probable cause exists to believe that the manufacturer's serial number, engine or component number or other distinguishing number or mark or identification mark or number placed under assignment of the division has been removed, defaced, covered, altered or destroyed. Within ten days of the issuance of the order, the law enforcement agency shall cause to have the matter of the vehicle, motor vehicle or motor vehicle engine or component brought before a district court by filing in that court a petition requesting that the vehicle or item be declared contraband unless the court grants an extension of time for the filing based on some reasonable requirement for extension of the filing by the law enforcement agency. If at the time of the hearing on that petition the court finds that the manufacturer's serial number, engine or component number or other distinguishing number or mark or identification mark or number placed under assignment of the division has been removed, defaced, covered, altered or destroyed, the court shall declare the vehicle, motor vehicle or motor vehicle engine or

component to be contraband unless one of the exceptions enumerated in this section applies. At the time the vehicle, motor vehicle or motor vehicle engine or component is declared to be contraband, the court shall order that it be disposed of according to Subsection D of this section. Any vehicle, motor vehicle or motor vehicle engine or component in such condition shall not be subject to replevin except by an owner who can trace the owner's ownership of that vehicle, motor vehicle or motor vehicle engine or component from the manufacturer by furnishing the court records indicating the identity of all intermediate owners. The law enforcement agency seizing the vehicle, motor vehicle or motor vehicle engine or component shall provide the person from whom it was taken a receipt for the vehicle, motor vehicle or motor vehicle engine or component.

C. The vehicle, motor vehicle or motor vehicle engine or component shall not be considered contraband when:

(1) it has been determined that the vehicle, motor vehicle or motor vehicle engine or component has been reported as stolen;

(2) the vehicle, motor vehicle or motor vehicle engine or component is recovered in the condition described in Subsection B of this section;

(3) it clearly appears that the true owner is not responsible for the altering, concealing, defacing or destroying of the vehicle, motor vehicle or motor vehicle engine or component;

(4) the true owner obtains an assigned number issued by the division for the vehicle, motor vehicle or motor vehicle engine or component;

(5) the new assigned numbers have been issued for and placed upon the vehicle, motor vehicle or motor vehicle engine or component by the division utilizing a unique numbering system for that purpose; or

(6) a person licensed under the provisions of Sections 66-4-1 through 66-4-9 NMSA 1978, when in the course of the person's business and consistent with the provisions of Section 30-16D-6 NMSA 1978 and the rules and regulations promulgated by the division, removes, defaces, covers, alters or destroys the manufacturer's serial or engine or component number or other distinguishing number or identification mark or number placed under assignment of the division of a vehicle required to be registered under the Motor Vehicle Code.

D. If it is impossible to locate a true owner who meets the provisions of Subsection C of this section to claim the vehicle, motor vehicle or motor vehicle engine or component, it may be retained as long as it is used for police purposes, after which time, or if not suitable for police use, it shall be destroyed.

**History:** 1953 Comp., § 64-3-507, enacted by Laws 1978, ch. 35, § 94; 2009, ch. 253, § 10; 2009, ch. 261, § 10.

## ANNOTATIONS

**The 2009 amendment,** effective July 1, 2009, after "engine", added "or component"; in Subsection B, after "motor vehicle or motor vehicle engine or component", added "or decal"; in Paragraph (6) of Subsection C, after "identification mark", added "or number placed under assignment of the division" and after "Motor Vehicle Code", deleted "or number placed thereon under assignment of the division"; and in Subsection D, after "it may be retained", deleted "by the law enforcement agency confiscating it".

Laws 2009, ch. 253, § 10 and Laws 2009, ch. 261, § 10 enacted identical amendments to this section. The section was set out as amended by Laws 2009, ch. 261, § 10. *See* 12-1-8 NMSA 1978.

**Constitutionality.** — This section does not violate due process, nor does it violate the Commerce Clause of the United States Constitution. *State ex rel. Dep't of Pub. Safety v. One 1986 Peterbilt Tractor*, 1997-NMCA-050, 123 N.M. 387, 940 P.2d 1182.

**Police powers of state.** — This section is a proper exercise of the police powers of the state. *State ex rel. Dep't of Pub. Safety v. One 1986 Peterbilt Tractor*, 1997-NMCA-050, 123 N.M. 387, 940 P.2d 1182.

**Privacy protection.** — This section does not create a greater privacy protection for a driver under the New Mexico Constitution than under the Fourth Amendment of the United States Constitution, especially where driver lacked registration for his vehicle and a computer check confirmed the wrong license plate on the vehicle. *State v. Romero*, 2002-NMCA-064, 132 N.M. 364, 48 P.3d 102, cert. denied, 132 N.M. 397, 49 P.3d 76.

**Search of vehicle.** — Entering a locked vehicle without probable cause and disturbing papers on the dashboard in order to uncover the vehicle identification number constituted an unreasonable search and seizure. Because the VIN was covered, the officers should have impounded the vehicle under the authority of this section and Section 66-3-508 [recompiled as Section 30-16D-6] NMSA 1978 and, having failed to do so, they had no right to enter the vehicle. *State v. Guebara*, 1995-NMCA-031, 119 N.M. 662, 894 P.2d 1018, cert. quashed, 121 N.M. 783, 918 P.2d 369 (1996).

**Ownership.** — An owner of a truck with an engine having an altered vehicle identification number (VIN) who could not produce documents providing evidence of his title to the engine through its intermediate owners to the manufacturer was not the "true owner," and was not entitled to return of the forfeited engine, even though he had not participated in the alteration or defacement of the VIN. *State ex rel. Dep't of Pub. Safety v. One 1986 Peterbilt Tractor*, 1997-NMCA-050, 123 N.M. 387, 940 P.2d 1182.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 353.

Constitutionality of statute making possession of automobile from which identifying marks have been removed a crime, 4 A.L.R. 1538, 42 A.L.R. 1149.

61A C.J.S. Motor Vehicles § 596.

## 66-3-508. Recompiled.

**History:** 1953 Comp., § 64-3-508, enacted by Laws 1978, ch. 35, § 95; 1978 Comp, § 66-3-508 recompiled and amended as § 30-16D-6 by Laws 2009, ch. 253, § 6 and Laws 2009, ch. 261, § 6.

**ANNOTATIONS**

**Recompilations.** — Laws 2009, ch. 253, § 6 and Laws 2009, ch. 261, § 6 recompiled and amended former 66-3-508 NMSA 1978, relating to altering or changing engine or other numbers, as 30-16D-6 NMSA 1978, effective July 1, 2009.

# PART 7
# MISCELLANEOUS PROVISIONS

## 66-3-601 to 66-3-603. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1995, ch. 135, § 29 repealed former 66-3-601 through 66-3-603 NMSA 1978, as enacted by Laws 1978, ch. 35, §§ 96 to 98, relating to portable flare requirements, effective June 16, 1995. For provisions of former sections, *see* the 1994 NMSA 1978 on *NMOneSource.com.*

## 66-3-604. Recompiled.

**ANNOTATIONS**

**Recompilations.** — Laws 1990, ch. 120, § 43 recompiled 66-3-604 NMSA 1978, relating to special registration plates for radio station licensees, as 66-3-417 NMSA 1978, effective July 1, 1990.

# PART 8
# BICYCLES

## 66-3-701. Bicycles; effect of regulations.

A. It is a penalty assessment misdemeanor for a person to do any act forbidden or fail to perform any act required by Sections 66-3-701 through 66-3-707 NMSA 1978.

B. The parent of any child and the guardian of any ward shall not authorize or permit any child or ward to violate any of the provisions of the Motor Vehicle Code.

C. These regulations applicable to bicycles apply whenever a bicycle is operated upon any highway or upon any path set aside for the exclusive use of bicycles subject to those exceptions stated in Sections 66-3-701 through 66-3-707 NMSA 1978.

**History:** 1953 Comp., § 64-3-701, enacted by Laws 1978, ch. 35, § 100; 2018, ch. 74, § 26.

**ANNOTATIONS**

**Cross references.** — For the penalty for commission of a misdemeanor, *see* 66-8-7 NMSA 1978.

For guardians generally, *see* 45-5-201 to 45-5-212 NMSA 1978.

**The 2018 amendment,** effective July 1, 2018, reduced the penalty to a penalty assessment misdemeanor a violations of traffic laws applicable to persons riding bicycles, and revised certain statutory references; in Subsection A, after "It is a", added "penalty assessment"; and in Subsection C, deleted "herein" and added "in Sections 66-3-701 through 66-3-707 NMSA 1978".

## 66-3-702. Traffic laws apply to persons riding bicycles.

Every person riding a bicycle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle, except as to the special regulations within Sections 66-3-701 through 66-3-707 NMSA 1978.

**History:** 1953 Comp., § 64-3-702, enacted by Laws 1978, ch. 35, § 101.

**ANNOTATIONS**

**Cross references.** — For traffic laws generally, *see* 66-7-2 NMSA 1978 et seq.

**Bicyclists are placed in the same duty category** as other vehicular traffic. *Aragon v. Speelman*, 1971-NMCA-161, 83 N.M. 285, 491 P.2d 173.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 209.

## 66-3-703. Riding on bicycles.

A. A person propelling a bicycle shall not ride other than upon or astride a permanent and regular seat attached thereto.

B. No bicycle shall be used to carry more persons at one time than the number for which it is designed and equipped.

**History:** 1953 Comp., § 64-3-703, enacted by Laws 1978, ch. 35, § 102.

## 66-3-704. Clinging to vehicles.

No person riding upon any bicycle, coaster, roller skates, sled or toy vehicle shall attach the same or himself to any vehicle upon a roadway.

**History:** 1941 Comp., § 68-2443, enacted by Laws 1953, ch. 139, § 96; 1953 Comp., § 64-19-4; recompiled as 1953 Comp., § 64-3-704, by Laws 1978, ch. 35, § 103.

## 66-3-705. Riding on roadways and bicycle paths.

A. Every person operating a bicycle upon a roadway shall ride as near to the right side of the roadway as practicable, exercising due care when passing a standing vehicle or one proceeding in the same direction.

B. Persons riding bicycles upon a roadway shall not ride more than two abreast except on paths or parts of roadways set aside for the exclusive use of bicycles.

C. Notwithstanding any provision of this section, no bicycle shall be operated on any roadway in a manner that would create a public safety hazard.

**History:** 1953 Comp., § 64-3-705, enacted by Laws 1978, ch. 35, § 104; 1997, ch. 47, § 1.

**ANNOTATIONS**

**The 1997 amendment,** effective July 1, 1997, rewrote Subsection C, and made stylistic changes throughout the section.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — State and local government liability for injury or death of bicyclist due to defect or obstruction in public bicycle path, 68 A.L.R.4th 204.

Admissibility and use of evidence of nonuse of bicycle helmets. 2 A.L.R.6th 429.

State and local governmental liability for injury or death of bicyclist due to defect or obstruction in public roadway or sidewalk. 12 A.L.R. 6th 645.

## 66-3-706. Carrying articles.

No person operating a bicycle shall carry any package, bundle or article which prevents the driver from keeping at least one hand upon the handlebar.

**History:** 1953 Comp., § 64-3-706, enacted by Laws 1978, ch. 35, § 105.

## 66-3-707. Lamps and other equipment on bicycles.

A. Every bicycle when in use at nighttime shall be equipped with a lamp on the front which shall emit a white light visible from a distance of at least five hundred feet to the front and with a red reflector on the rear of a type approved by the division which shall be visible from all distances from fifty feet to three hundred feet to the rear when directly in front of lawful upper beams of head lamps on a motor vehicle. A lamp emitting a red light visible from a distance of five hundred feet to the rear may be used in addition to the red reflector.

B. No person shall operate a bicycle unless it is equipped with a bell or other device capable of giving a signal audible for a distance of at least one hundred feet, except that a bicycle shall not be equipped with, nor shall any person use upon a bicycle any siren or whistle.

C. Every bicycle shall be equipped with a brake which will enable the operator to make the brake wheels skid on dry, level, clean pavement.

**History:** 1953 Comp., § 64-3-707, enacted by Laws 1978, ch. 35, § 106.

## 66-3-708. Electric-assisted bicycles; labels; standards.

A. Every manufacturer or distributor of new electric-assisted bicycles intended for sale or distribution in New Mexico shall permanently affix to each electric-assisted bicycle, in a prominent location, a label that contains the classification number, top assisted speed and motor wattage of the electric-assisted bicycle. The label shall be printed in arial font in at least nine-point type.

B. A person shall not knowingly modify an electric-assisted bicycle so as to change the speed capability or motor engagement of the electric-assisted bicycle without also appropriately replacing, or causing to be replaced, the label indicating the classification required by Subsection A of this section.

C. An electric-assisted bicycle shall comply with the equipment and manufacturing requirements for bicycles adopted by the United States consumer product safety commission and codified at 16 CFR 1512 or its successor regulation.

D. A class 2 electric-assisted bicycle shall operate in a manner so that the electric motor is disengaged or ceases to function when the brakes are applied. Class 1 and

class 3 electric-assisted bicycles shall be equipped with a mechanism or circuit that cannot be bypassed and that causes the electric motor to disengage or cease to function when the rider stops pedaling.

E. A class 3 electric-assisted bicycle shall be equipped with a speedometer that displays, in miles per hour, the speed that the electric-assisted bicycle is traveling.

**History:** 1978 Comp., § 66-3-708, enacted by Laws 2023, ch. 93, § 6.

**ANNOTATIONS**

**Effective dates.** — Laws 2023, ch. 93, § 8 made Laws 2023, ch. 93, § 6 effective July 1, 2023.

## 66-3-709. Operation of electric-assisted bicycles.

A. A person may ride a class 1 electric-assisted bicycle on a bicycle or pedestrian path where bicycles are authorized to travel; provided that a political subdivision of the state may prohibit the operation of a class 1 electric-assisted bicycle on a bicycle or pedestrian path within its jurisdiction.

B. A person shall not ride a class 2 or class 3 electric-assisted bicycle on a bicycle or pedestrian path unless:

(1) the path is within a street or highway; or

(2) a political subdivision of the state permits the operation of a class 2 or class 3 electric-assisted bicycle on a path under its jurisdiction.

C. A person under sixteen years of age shall not operate a class 3 electric-assisted bicycle upon any street, highway or bicycle or pedestrian path, except that a person under sixteen years of age may ride as a passenger on a class 3 electric-assisted bicycle that is designed to accommodate passengers.

D. This section does not apply to a trail that is specifically designated as non-motorized and that has a natural surface tread that is made by clearing and grading the native soil with no added surfacing materials. A political subdivision of the state or a state agency having jurisdiction over a trail described in this subsection may regulate the use of an electric-assisted bicycle on that trail.

**History:** 1978 Comp., § 66-3-709, enacted by Laws 2023, ch. 93, § 7.

**ANNOTATIONS**

**Effective dates.** — Laws 2023, ch. 93, § 8 made Laws 2023, ch. 93, § 7 effective July 1, 2023.

# PART 9
# EQUIPMENT

## 66-3-801. Equipment; prohibited acts.

A. Except as otherwise provided in this section, it is a penalty assessment misdemeanor for a person to drive or move or for the owner to cause or permit to be driven or moved on any highway any vehicle or combination of vehicles that is in such unsafe condition as to endanger any person or that does not contain those parts or is not at all times equipped with such lamps and other equipment in proper condition and adjustment as is required by Sections 66-3-801 through 66-3-887 NMSA 1978 or that is equipped in any manner that is in violation of those sections or for any person to do any act forbidden or fail to perform any act required under those sections.

B. Nothing contained in Sections 66-3-801 through 66-3-887 NMSA 1978 shall be construed to prohibit the use of additional parts and accessories on any vehicle that are not inconsistent with the provisions of those sections.

C. The provisions of Sections 66-3-801 through 66-3-887 NMSA 1978 with respect to equipment on vehicles shall not apply to implements of husbandry, road machinery, road rollers or farm tractors except as made applicable in those sections.

D. The provisions of Sections 66-3-801 through 66-3-887 NMSA 1978 apply to vehicles subject to the provisions of the Motor Carrier Safety Act [65-3-1 to 65-3-14 NMSA 1978] only to the extent that the provisions of Sections 66-3-801 through 66-3-887 NMSA 1978 do not conflict with the provisions of the Motor Carrier Safety Act and regulations promulgated under that act.

**History:** 1953 Comp., § 64-3-801, enacted by Laws 1978, ch. 35, § 107; 1991, ch. 160, § 10; 2018, ch. 74, § 27.

**ANNOTATIONS**

**Cross references.** — For general definitions, *see* 66-1-4 to 66-1-4.20 NMSA 1978.

For prescribing safety standards for motorized bicycles, *see* 66-3-1101 NMSA 1978.

For penalty for misdemeanor, *see* 66-8-7 NMSA 1978.

For penalty assessments for misdemeanor, *see* 66-8-116 NMSA 1978.

**The 2018 amendment,** effective July 1, 2018, reduced the penalty for violations of the provisions of Sections 66-3-801 through 66-3-887 NMSA 1978 to a penalty assessment misdemeanor, except as otherwise provided in the section, and made technical changes; and in Subsection A, after "it is a", added "penalty assessment".

**The 1991 amendment,** effective July 1, 1991, substituted "prohibited acts" for "scope and effect of regulation" in the catchline; substituted "66-3-801 through 66-3-887 NMSA 1978" for "64-3-801 through 64-3-887 NMSA 1953" in Subsections A, B and C; added "Except as otherwise provided in this section" at the beginning of Subsection A; added Subsection D; and made minor stylistic changes throughout the section.

**Unsafe vehicle may be stopped.** — A motor vehicle with a cracked windshield may be constitutionally stopped if in an unsafe condition, because of this section's prohibition on driving a vehicle that is in an unsafe condition. *State v. Munoz*, 1998-NMCA-140, 125 N.M. 765, 965 P.2d 349.

**Duty of maintaining brakes in proper condition is placed upon owner,** and if the brakes do not meet the standard set by the statute, and such failure is not excused, the owner is guilty of negligence in permitting the automobile on the highway in such condition. *Ferran v. Jacquez*, 1961-NMSC-072, 68 N.M. 367, 362 P.2d 519.

**Presumption of knowledge.** — Owner of vehicle is presumed to know of defective condition of the vehicle. *Ferran v. Jacquez*, 1961-NMSC-072, 68 N.M. 367, 362 P.2d 519.

**Proof of defective battery not proof of improper lighting.** — Fact that truck was equipped with a defective battery after an accident does not necessarily mean that the proper lights were not burning on the truck or that the battery was defective prior to an emergency stop. Where trial court made no finding whether the lights were burning or not before or at the time of the accident, a conclusion that the truck was improperly lighted would not flow from the findings as made. *Terrel v. Lowdermilk*, 1964-NMSC-073, 74 N.M. 135, 391 P.2d 419.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 185 to 195, 779 to 791.

60 C.J.S. Motor Vehicles § 26; 60A C.J.S. Motor Vehicles § 260.

Validity of routine roadblock by state or local policy for purposes of discovery of driver's license, registration, and safety violations. 116 A.L.R.5th 479.

Authority of public official, whose duties or functions generally do not entail traffic stops, to effectuate traffic stop of vehicle. 18 A.L.R.6th 519.

## 66-3-802. When lighted lamps are required.

A. Every vehicle upon a highway within this state at any time from a half-hour after sunset to a half-hour before sunrise and at any other time when there is not sufficient light to render clearly discernible persons and vehicles on the highway at a distance of five hundred feet ahead shall display lighted lamps and illuminating devices as respectively required in Sections 66-3-801 through 66-3-887 NMSA 1978 for different

classes of vehicles, subject to exceptions with respect to parked vehicles as stated in Section 66-3-825 NMSA 1978.

B. A person who violates the provisions of this section is guilty of a penalty assessment misdemeanor.

**History:** 1953 Comp., § 64-3-802, enacted by Laws 1978, ch. 35, § 108; 2018, ch. 74, § 28.

## ANNOTATIONS

**The 2018 amendment,** effective July 1, 2018, provided a penalty for any violation of this section, and added statutory references; added subsection designation "A."; in Subsection A, after "respectively required", added "in Sections 66-3-801 through 66-3-887 NMSA 1978", and after "stated", added "in Section 66-3-825 NMSA 1978"; and added Subsection B.

**No reasonable suspicion justifying vehicle stop.** — Where the arresting deputy stated more than once at trial that he could see the defendant's vehicle at 500 yards when the sun was only just setting, there was no reason at all to pull over the defendant's car as there was no safety concern or reasonable suspicion of a violation of this section, and therefore the vehicle stop was illegal. *State v. Joe*, 2003-NMCA-071, 133 N.M. 741, 69 P.3d 251, cert. denied, 2003-NMCERT-005, 133 N.M. 727, 69 P.3d 237.

**Proof of defective battery not proof of improper lighting.** — Fact that truck was equipped with a defective battery after an accident does not necessarily mean that the proper lights were not burning on the truck or that the battery was defective prior to an emergency stop. Where trial court made no finding whether the lights were burning or not before or at the time of the accident, a conclusion that the truck was improperly lighted would not flow from the findings as made. *Terrel v. Lowdermilk*, 1964-NMSC-073, 74 N.M. 135, 391 P.2d 419.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 189.

Driving motor vehicle without lights or with improper lights as affecting liability for collision, 21 A.L.R.2d 7, 62 A.L.R.3d 560, 62 A.L.R.3d 771, 62 A.L.R.3d 844; 62 A.L.R.3d 560.

Driving motor vehicle without lights or with improper lights as gross negligence or the like warranting recovery by guest under guest statute or similar common-law rule, 21 A.L.R.2d 209.

Contributory negligence of driver or occupant of vehicle driven without lights or with defective or inadequate lights, 67 A.L.R.2d 118, 62 A.L.R.3d 560, 771, 844.

60 C.J.S. Motor Vehicles § 26; 60A C.J.S. Motor Vehicles § 263.

## 66-3-803. Visibility distance and mounted height of lamps.

A. Whenever requirement is hereinafter declared as to the distance from which certain lamps and devices shall render objects visible or within which such lamps or devices shall be visible, said provisions shall apply during the times stated in Section 66-3-802 NMSA 1978 in respect to a vehicle without load when upon a straight, level, unlighted highway under normal atmospheric conditions unless a different time or condition is expressly stated.

B. Whenever requirement is hereinafter declared as to the mounted height of lamps or devices it shall mean from the center of such lamp or device to the level ground upon which the vehicle stands when such vehicle is without a load.

**History:** 1953 Comp., § 64-3-803, enacted by Laws 1978, ch. 35, § 109.

## 66-3-804. Headlamps on motor vehicles.

A. Every motor vehicle other than a motorcycle shall be equipped with at least two headlamps with at least one on each side of the front of the motor vehicle, which headlamps comply with the requirements and limitations set forth in Sections 66-3-801 through 66-3-887 NMSA 1978.

B. Every motorcycle shall be equipped with at least one and not more than two headlamps that comply with the requirements and limitations of Sections 66-3-801 through 66-3-887 NMSA 1978.

C. Every headlamp upon every motor vehicle, including every motorcycle, shall be located at a height measured from the center of the headlamp of not more than fifty-four inches or less than twenty inches to be measured as set forth in Subsection B of Section 66-3-803 NMSA 1978. The provisions of this subsection apply only to new motor vehicles sold after July 1, 1953.

D. A person who violates the provisions of this section is guilty of a penalty assessment misdemeanor.

**History:** 1953 Comp., § 64-3-804, enacted by Laws 1978, ch. 35, § 110; 1981, ch. 361, § 12; 2018, ch. 74, § 29.

**ANNOTATIONS**

**The 2018 amendment,** effective July 1, 2018, provided a penalty for any violation of this section, and made technical changes; and added Subsection D.

**Negligence per se to drive automobile with only one headlight.** *Silva v. Waldie*, 1938-NMSC-048, 42 N.M. 514, 82 P.2d 282.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 190.

60 C.J.S. Motor Vehicles § 26; 60A C.J.S. Motor Vehicles § 263.

## 66-3-805. Tail lamps.

A. Every motor vehicle, trailer, semitrailer, pole trailer and any other vehicle that is being drawn at the end of a train of vehicles shall be equipped with at least one tail lamp mounted on the rear that, when lighted as required in Section 66-3-802 NMSA 1978, emits a red light plainly visible from a distance of five hundred feet to the rear; provided that, in the case of a train of vehicles, only the tail lamp on the rearmost vehicle need actually be seen from the distance specified. Every such vehicle, other than a truck tractor, registered in this state and manufactured or assembled after July 1, 1953 shall be equipped with at least two tail lamps mounted on the rear that when lighted as required in Section 66-3-802 NMSA 1978 comply with the provisions of this section.

B. Every tail lamp upon every vehicle shall be located at a height of not more than seventy-two inches or less than twenty inches.

C. Either a tail lamp or a separate lamp shall be so constructed and placed as to illuminate with a white light the rear registration plate and render it clearly legible from a distance of fifty feet to the rear. Any tail lamp, together with any separate lamp for illuminating the rear registration plate, shall be so wired as to be lighted whenever the headlamps or auxiliary driving lamps are lighted.

D. A person who violates the provisions of this section is guilty of a penalty assessment misdemeanor.

**History:** 1953 Comp., § 64-3-805, enacted by Laws 1978, ch. 35, § 111; 2018, ch. 74, § 30.

**ANNOTATIONS**

**Cross references.** — For the definition of "truck tractor", *see* 66-1-4.17 NMSA 1978.

**The 2018 amendment,** effective July 1, 2018, provided a penalty for any violation of this section, added statutory references, and made technical changes; in Subsection A, after the first occurrence of "when lighted as required", deleted "shall emit" and added "in Section 66-3-802 NMSA 1978, emits", and after the second occurrence of "when lighted as required", deleted "shall" and added "in Section 66-3-802 NMSA 1978"; and added Subsection D.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 788.

## 66-3-806. New motor vehicles to be equipped with reflectors.

A. Every new motor vehicle hereafter sold and operated upon a highway, other than a truck tractor, shall carry on the rear, either as a part of the tail lamps or separately, two red reflectors, except that every motorcycle shall carry at least one reflector, meeting the requirements of this section, and except that vehicles of the type mentioned in Section 66-3-809 NMSA 1978 shall be equipped with reflectors as required in those sections applicable to those vehicles.

B. Every reflector shall be mounted on the vehicle at a height not less than twenty inches or more than sixty inches measured as set forth in Subsection B of Section 66-3-803 NMSA 1978 and shall be of such size and characteristics and so mounted as to be visible at night from all distances within three hundred feet to fifty feet from the vehicle when directly in front of lawful upper beams of headlamps, except that visibility from a greater distance is hereinafter required of reflectors on certain types of vehicles.

C. A person who violates the provisions of this section is guilty of a penalty assessment misdemeanor.

**History:** 1953 Comp., § 64-3-806, enacted by Laws 1978, ch. 35, § 112; 1981, ch. 361, § 13; 2018, ch. 74, § 31.

**ANNOTATIONS**

**Cross references.** — For definitions of "moped" and "motorcycle", *see* 66-1-4.11 NMSA 1978.

For the definition of "truck tractor", *see* 66-1-4.17 NMSA 1978.

**The 2018 amendment,** effective July 1, 2018, provided a penalty for any violation of this section, and made technical changes; and added Subsection C.

**Reflector's purpose defeated where car parked facing traffic.** — The effect and purpose of the reflectors on the rear of defendant's automobile was defeated through defendant's parking his automobile on the wrong side of the street and facing oncoming traffic. *Chavira v. Carnahan*, 1967-NMSC-040, 77 N.M. 467, 423 P.2d 988.

## 66-3-807. Stop lamps and turn signals required on designated vehicles.

A. From and after January 1, 1954, it shall be unlawful for any person to sell any new motor vehicle, including any motorcycle, in this state or for any person to drive such

vehicle on the highways unless it is equipped with at least one stop lamp meeting the requirements of Section 66-3-828 NMSA 1978.

B. No person shall sell or offer for sale or operate on the highways any motor vehicle, trailer, semitrailer or house trailer registered in this state which was manufactured or assembled after January 1, 1954, unless it is equipped with mechanical or electric turn signals meeting the requirements of Section 66-3-828 NMSA 1978. This subsection shall not apply to any motorcycle.

**History:** 1953 Comp., § 64-3-807, enacted by Laws 1978, ch. 35, § 113; 1981, ch. 361, § 14.

## 66-3-808. Application of succeeding sections.

Sections 66-3-809, 66-3-810, 66-3-816, 66-3-822 and 66-3-823 NMSA 1978 shall apply in lieu of Sections 66-3-804 through 66-3-806 NMSA 1978 as to passenger buses, trucks, truck tractors, road tractors, and such trailers, semitrailers and pole trailers provided for therein, when operated upon any highway, and said vehicles shall be equipped as required. All lamp equipment required shall be lighted at the times mentioned in Section 66-3-802 NMSA 1978.

**History:** 1953 Comp., § 64-3-808, enacted by Laws 1978, ch. 35, § 114.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 192.

## 66-3-809. Additional equipment required on certain vehicles.

Every bus or truck less than eighty inches in overall width shall be equipped as follows:

A. on the front: two headlamps; and

B. on the rear: one red tail lamp; one red or amber stop lamp; two red reflectors, one at each side.

**History:** 1953 Comp., § 64-3-809, enacted by Laws 1978, ch. 35, § 115.

**ANNOTATIONS**

**Cross references.** — For the definition of "bus", *see* 66-1-4.2 NMSA 1978.

For the definition of "truck", *see* 66-1-4.17 NMSA 1978.

For reflector mounting requirements, *see* 66-3-816 NMSA 1978.

## 66-3-810. Color of clearance lamps, side-marker lamps and reflectors.

Every bus or truck eighty inches or more in overall width shall be equipped as follows:

A. on the front: two headlamps; two amber clearance lamps, one at each side;

B. on the rear: one red tail lamp; one red or amber stop lamp; two red clearance lamps, one at each side; two red reflectors, one at each side;

C. all lighting devices and reflectors mounted on the rear of any vehicle shall display or reflect a red color, except the stop light or other signal device, which may be red, amber or yellow, and except that the light illuminating the license plate shall be white and the light emitted by a back-up lamp shall be white or amber; and

D. on each side: one amber side-marker lamp, located at or near the front; one red side-marker lamp, located at or near the rear; one amber reflector, located at or near the front; one red reflector, located at or near the rear.

**History:** 1953 Comp., § 64-3-810, enacted by Laws 1978, ch. 35, § 116.

**ANNOTATIONS**

**Cross references.** — For the definition of "bus", *see* 66-1-4.2 NMSA 1978.

For the definition of "truck", *see* 66-1-4.17 NMSA 1978.

For reflector mounting requirements, *see* 66-3-816 NMSA 1978.

## 66-3-811. Lamps and reflectors; truck tractors and road tractors.

Every truck tractor and road tractor shall be equipped as follows:

A. on the front: two headlamps; two amber clearance lamps, one at each side; and

B. on the rear: one red tail lamp; one red or amber stop lamp.

**History:** 1953 Comp., § 64-3-811, enacted by Laws 1978, ch. 35, § 117.

**ANNOTATIONS**

**Cross references.** — For the definition of "road tractor", *see* 66-1-4.15 NMSA 1978.

For the definition of "truck tractor", *see* 66-1-4.17 NMSA 1978.

## 66-3-812. Lamps and reflectors; large semitrailers, full trailers and house trailers.

A. Every semitrailer, full trailer or house trailer eighty inches or more in overall width shall be equipped as follows:

(1) on the front: two amber clearance lamps, one at each side;

(2) on the rear: one red tail lamp; one red or amber stop lamp; two red clearance lamps, one at each side; two red reflectors, one at each side; and

(3) on each side: one amber side-marker lamp, located at or near the front; one red side-marker lamp, located at or near the rear; one amber reflector, located at or near the front; one red reflector, located at or near the rear.

B. Side-marker lamps may be in combination with clearance lamps and may use the same light source.

**History:** 1953 Comp., § 64-3-812, enacted by Laws 1978, ch. 35, § 118.

**ANNOTATIONS**

**Cross references.** — For the definition of "house trailer", *see* 66-1-4.8 NMSA 1978.

For the definition of "semitrailer", *see* 66-1-4.16 NMSA 1978.

For the definition of "trailer", *see* 66-1-4.17 NMSA 1978.

## 66-3-813. Lamps and reflectors, small semitrailers, house trailers and trailers.

Every semitrailer, house trailer or trailer less than eighty inches in overall width shall be equipped as follows: on the rear: one red tail lamp; two red reflectors, one at each side; one red or amber stop lamp, if the semitrailer, house trailer or trailer obscures the stop lamp on the towing vehicle.

**History:** 1953 Comp., § 64-3-813, enacted by Laws 1978, ch. 35, § 119.

**ANNOTATIONS**

**Cross references.** — For the definition of "house trailer", *see* 66-1-4.8 NMSA 1978.

For the definition of "semitrailer", *see* 66-1-4.16 NMSA 1978.

For the definition of "trailer", *see* 66-1-4.17 NMSA 1978.

## 66-3-814. Lamps and reflectors, pole trailers.

Every pole trailer shall be equipped as follows:

A. on the rear: one red tail lamp, two red reflectors, one at each side; placed to indicate extreme width of the pole trailer; and

B. on each side, on the rearmost support for the load: one combination marker lamp showing amber to the front and red to the side and rear, mounted to indicate the maximum width of the pole trailer; and red reflector, located at or near the rear; and on pole trailers thirty feet or more in overall length, an amber marker lamp on each side near the center.

**History:** 1953 Comp., § 64-3-814, enacted by Laws 1978, ch. 35, § 120.

**ANNOTATIONS**

**Cross references.** — For definition of "pole trailer", *see* 66-1-4.14 NMSA 1978.

## 66-3-815. Lamps and reflectors, combinations in driveaway-towaway operations.

Combinations of motor vehicles, as enumerated in Section 66-3-808 NMSA 1978, engaged in driveway-towaway [driveaway-towaway] operations shall be equipped as follows:

A. on the towing vehicle:

(1) on the front, two head lamps and two amber clearance lamps, one at each side;

(2) on each side and near the front, one amber side-marker lamp;

(3) on the rear, one red tail lamp; one red or amber stop lamp; and

(4) provided, however, that vehicles of less than eighty inches in width shall be equipped as provided in Section 66-3-809 NMSA 1978;

B. on the towed vehicle of a tow-bar combination, the towed vehicle of a single saddle-mount combination and on the rearmost towed vehicle of a double saddle-mount combination:

(1) on each side, and near the rear, one red side-marker lamp; and

(2) on the rear, one red tail lamp; two red clearance lamps, one at each side; one red or amber stop lamp; two red reflectors, one at each side;

C. on the first saddle-mounted of a double saddle-mount combination: on each side, and near the rear, one amber side-marker lamp; and

D. combinations of vehicles less than eighty inches in width in driveaway-towaway operations shall carry lamp and reflectors as required in Section 66-3-809 NMSA 1978.

**History:** 1953 Comp., § 64-3-815, enacted by Laws 1978, ch. 35, § 121.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material in this section was inserted by the compiler. It was not enacted by the legislature, and it is not part of the law.

## 66-3-816. Mounting of reflectors, clearance lamps and side-marker lamps.

A. Reflectors required by Sections 66-3-809 and 66-3-810 NMSA 1978 shall be mounted upon the motor vehicle at a height of not less than twenty-four inches nor more than sixty inches above the ground on which the motor vehicle stands, except that reflectors shall be mounted as high as practicable on motor vehicles which are so constructed as to make compliance with the twenty-four-inch requirements impractical. They shall be so installed as to perform their function adequately and reliably and, except for temporary reflectors required for vehicles in driveaway-towaway operations, all reflectors shall be permanently and securely mounted in workmanlike manner so as to provide the maximum of stability, and the minimum likelihood of damage. Required reflectors otherwise properly mounted may be securely installed on flexible strapping or belting provided that under conditions of normal operation they reflect light in the required directions. Required temporary reflectors mounted on motor vehicles during the time they are in transit in any driveaway-towaway operation must be firmly attached.

B. All reflectors on the rear and those nearest to the rear on the sides, except those referred to in Subsection C of this section, shall reflect a red color; all other reflectors, except those referred to in Subsection C of this section, shall reflect an amber color; provided that this requirement shall not be construed to prohibit the use of motor vehicles in combination if such motor vehicles are severally equipped with reflectors as required by Sections 66-3-809 through 66-3-815 NMSA 1978.

C. Retroreflective surfaces, other than required reflectors, may be used, provided:

(1) designs do not resemble traffic control signs, lights or devices, except that straight edge stripping resembling a barricade pattern may be used;

(2) designs do not tend to distort the length or width of the motor vehicle;

(3) such surfaces shall be at least three inches from any required lamp or reflector unless of the same color as such lamp or reflector;

(4) no red color shall be used on the front of any motor vehicle; and

(5) no provision of this subsection shall be so construed as to prohibit the use of retroreflective registration plates required by any state or local authorities.

**History:** 1953 Comp., § 64-3-816, enacted by Laws 1978, ch. 35, § 122.

## 66-3-817. Clearance lamps to indicate extreme width, height and length.

Clearance lamps shall, so far as is practicable, be mounted as to indicate the extreme width, height and length of the motor vehicle; except that clearance lamps on truck tractors shall be so located as to indicate the extreme width of the truck-tractor cab.

**History:** 1941 Comp., § 68-2517, enacted by Laws 1953, ch. 139, § 131.1; 1953 Comp., § 64-20-17; recompiled as 1953 Comp., § 64-3-817, by Laws 1978, ch. 35, § 123.

**ANNOTATIONS**

**Cross references.** — For definition of "truck tractor", *see* 66-1-4.17 NMSA 1978.

## 66-3-818. Side-marker lamps combined with clearance lamps.

Side-marker lamps may be combined with clearance lamps and may use the same light source.

**History:** 1941 Comp., § 68-2518, enacted by Laws 1953, ch. 139, § 131.2; 1953 Comp., § 64-20-18; recompiled as 1953 Comp., § 64-3-818, by Laws 1978, ch. 35, § 124.

## 66-3-819. Combining tail and stop lamps.

Except as required by Section 66-3-817 NMSA 1978 tail lamps may be incorporated in the same housing with stop lamps so long as the requirements for each are fulfilled.

**History:** 1953 Comp., § 64-3-819, enacted by Laws 1978, ch. 35, § 125.

## 66-3-820. Lighting devices to be electric.

Lighting devices shall be electric, except that red liquid burning lanterns may be used on the end of load in the nature of poles, pipes and ladders projecting to the rear of the vehicle.

**History:** 1941 Comp., § 68-2520, enacted by Laws 1953, ch. 139, § 131.4; 1953 Comp., § 64-20-20; recompiled as 1953 Comp., § 64-3-820, by Laws 1978, ch. 35, § 126.

## 66-3-821. Requirements for headlamps and auxiliary road-lighting lamps.

A. Headlamps and lamps or auxiliary road-lighting lamps shall be mounted so that the beams are readily adjustable, both vertically and horizontally, and the mounting shall be such that the aim is not readily disturbed by ordinary conditions of service.

B. Every bus, truck or truck tractor shall be equipped with two single-beam headlamps supplemented by two auxiliary single-beam headlamps furnishing, respectively, an upper and lower distribution of light, also selectable at the driver's will.

C. Headlamps shall be constructed and installed so as to comply with the provisions of Sections 66-3-830 through 66-3-832 NMSA 1978.

**History:** 1953 Comp., § 64-3-821, enacted by Laws 1978, ch. 35, § 127.

**ANNOTATIONS**

**Cross references.** — For the definition of "bus", *see* 66-1-4.2 NMSA 1978.

For definitions of "truck" and "truck tractor", *see* 66-1-4.17 NMSA 1978.

## 66-3-822. Requirements for clearance, side-marker and other lamps.

A. Except for temporary side-marker and clearance lamps on motor vehicles, as enumerated in Section 66-3-808 NMSA 1978, being transported in driveaway-towaway operations, temporary electric lamps on projecting loads, and temporary marker lamps on pole trailers, all lamps shall be permanently and securely mounted in workmanlike manner on a permanent part of the motor vehicle. All clearance lamps and side-marker lamps must be firmly attached.

B. Clearance, side-marker, tail and projecting load-marker lamps shall be so mounted as to be capable of being seen from a distance of at least five hundred feet under clear atmospheric conditions during the time lamps are required to be lighted. The light from front clearance lamps shall be visible to the front and that from side-marker lamps to the side, that from rear clearance and tail lamps to the rear. This section shall not be construed to apply to lamps which are obscured by another unit of a combination of vehicles.

C. Clearance, side-marker, tail and projecting-load marker lamps shall be constructed and installed so as to provide an adequate and reliable warning signal.

**History:** 1953 Comp., § 64-3-822, enacted by Laws 1978, ch. 35, § 128.

## 66-3-823. Obstructed lights not required.

Whenever motor and other vehicles are operated in combination during the time that lights are required, any lamp, except tail lamps, need not be lighted which, by reason of its location on a vehicle of the combination, would be obscured by another vehicle of the combination; but, this shall not affect the requirement that lighted clearance lamps be displayed on the front of the foremost vehicle required to have clearance lamps, nor that all lights required on the rear of the rearmost vehicle of any combination shall be lighted.

**History:** 1953 Comp., § 64-3-823, enacted by Laws 1978, ch. 35, § 129.

## 66-3-824. Lamp or flag on projecting load.

A. Whenever the load upon any vehicle extends to the rear four feet or more beyond the bed or body of such vehicle there shall be displayed at the extreme rear end of the load, at the times specified in Section 66-3-802 NMSA 1978 hereof, a red light or lantern plainly visible from a distance of at least five hundred feet to the sides and rear. The red light or lantern required under this section shall be in addition to the red rear light required upon every vehicle. At any other time there shall be displayed at the extreme rear end of such load a red flag or cloth not less than twelve inches square and so hung that the entire area is visible to the driver of a vehicle approaching from the rear.

B. If any part of a vehicle, or any load thereon, or any mechanical device, whether a temporary or permanent part of the vehicle, extends beyond the front bumpers thereof the extreme front corners of such projection shall at the times specified in Section 66-3-802 NMSA 1978 be indicated by amber lights or lanterns visible from a distance of at least five hundred feet to the sides and front.

**History:** 1953 Comp., § 64-3-824, enacted by Laws 1978, ch. 35, § 130.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Liability for injury or damage caused by collision with portion of load projecting beyond rear or side of motor vehicle or trailer, 21 A.L.R.3d 371.

## 66-3-825. Lamps on parked vehicles.

A. Whenever a vehicle is lawfully parked upon a street or highway during the hours between a half-hour after sunset and a half-hour before sunrise and in the event there is

sufficient light to reveal any person or object within a distance of five hundred feet upon such street or highway no lights need be displayed upon such parked vehicle.

B. Whenever a vehicle is parked or stopped upon a roadway or shoulder adjacent thereto, whether attended or unattended, during the hours between a half-hour after sunset and a half-hour before sunrise and there is not sufficient light to reveal any person or object within a distance of five hundred feet upon such highway, such vehicle so parked or stopped shall be equipped with one or more lamps meeting the following requirements:

(1) at least one lamp shall display a white or amber light visible from a distance of five hundred feet to the front of the vehicle; and

(2) the same lamp or at least one other lamp shall display a red light visible from a distance of five hundred feet to the rear of the vehicle, and the location of said lamp or lamps shall always be such that at least one lamp or combination of lamps meeting the requirements of this section is installed as near as practicable to the side of the vehicle which is closest to passing traffic. The foregoing provisions shall not apply to a motorcycle.

C. Any lighted headlamps upon a parked vehicle shall be depressed or dimmed.

**History:** 1953 Comp., § 64-3-825, enacted by Laws 1978, ch. 35, § 131; 1981, ch. 361, § 15.

## ANNOTATIONS

**Cross references.** — For requirement that trucks carry flares and emergency signals, *see* 66-3-849 to 66-3-857 NMSA 1978.

**Proof of defective battery not proof of improper lighting.** — Fact that truck was equipped with a defective battery after an accident does not necessarily mean that the proper lights were not burning on the truck or that the battery was defective prior to an emergency stop. Where trial court made no finding whether the lights were burning or not before or at the time of the accident, a conclusion that the truck was improperly lighted would not flow from the findings as made. *Terrel v. Lowdermilk*, 1964-NMSC-073, 74 N.M. 135, 391 P.2d 419.

**Applicability to third parties question of fact.** — Where decedent was rendering assistance at the request of his son, and his son's car was without lights, it was a question of fact whether Section 64-20-25B, 1953 Comp. (similar to this section) applied to prevent recovery by decedent's estate from accident where defendant's car struck the son's unlighted car which in turn struck decedent. *Fitzgerald v. Valdez*, 1967-NMSC-088, 77 N.M. 769, 427 P.2d 655.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 191.

Liability of motorist colliding with person engaged about stalled or disabled vehicle on or near highway, 27 A.L.R.3d 12.

Regulations as to lights on parked or standing motor vehicle as affecting liability for collision, 61 A.L.R.3d 1.

Contributory negligence due to failure to dim or deflect lights on parked vehicle, 63 A.L.R.3d 824.

60A C.J.S. Motor Vehicles § 335.

## 66-3-826. Lamps on other vehicles and equipment.

A. All vehicles, including animal-drawn vehicles and including those referred to in Section 66-3-801C NMSA 1978 not specifically required by the provisions of Sections 66-3-801 through 66-3-887 NMSA 1978, to be equipped with lamps, shall at the times specified in Section 66-3-802 NMSA 1978 hereof be equipped with at least one lighted lamp or lantern exhibiting a white light visible from a distance of five hundred feet to the front of such vehicle and with a lamp or lantern exhibiting a red light visible from a distance of five hundred feet to the rear.

B. Every farm tractor not equipped with an electric lighting system shall at all times mentioned in Section 66-3-802 NMSA 1978 be equipped with lamps or lanterns meeting the requirements of Subsection A above. Every farm tractor equipped with an electric lighting system shall at all times mentioned in Section 66-3-802 NMSA 1978 display a red tail lamp and either multiple-beam or single-beam headlamps meeting the requirements of Sections 66-3-805, 66-3-830 and 66-3-832 NMSA 1978, respectively.

C. All combinations of tractors and towed farm equipment shall, in addition to the lighting equipment required by Subsection B above, be equipped with a lamp or lamps displaying a white or amber light visible from a distance of five hundred feet to the front and red light visible from a distance of five hundred feet to the rear, and said lamp or lamps shall be installed or capable of being positioned so that visibility from the rear is not obstructed by the towed equipment and so as to indicate the furthest projection of said towed equipment on the side of the road used by other vehicles in passing such combinations. And further, all such towed farm equipment shall be equipped either with two tail lamps displaying a red light visible from a distance of five hundred feet to the rear or two red reflectors visible from a distance of fifty to five hundred feet to the rear when illuminated by the upper beam of headlamps, and the location of such lamps or reflectors shall be such as to indicate as nearly as practicable the extreme left and right rear projections of said towed equipment on the highway.

**History:** 1953 Comp., § 64-3-826, enacted by Laws 1978, ch. 35, § 132.

**ANNOTATIONS**

**Cross references.** — For the definition of "farm tractor", *see* 66-1-4.6 NMSA 1978.

For the definition of "implement of husbandry", *see* 66-1-4.9 NMSA 1978.

## 66-3-827. Spot lamps and auxiliary lamps.

A. Any motor vehicle may be equipped with not to exceed two spot lamps and every lighted spot lamp shall be so aimed and used that no part of the high-intensity portion of the beam will be directed to the left of the prolongation of the extreme left side of the vehicle nor more than one hundred feet ahead of the vehicle; provided, however, that lighted spot lamps shall be turned off at least five hundred feet from approaching motor vehicles.

B. Any motor vehicle may be equipped with not to exceed two fog lamps mounted on the front at a height not less than twelve inches nor more than thirty inches above the level surface upon which the vehicle stands and so aimed, when the vehicle is not loaded, that none of the high-intensity portion of the light to the left of the center of the vehicle shall, at a distance of twenty-five feet ahead, project higher than a level of four inches below the level of the center of the lamp from which it comes. Lighted fog lamps meeting the above requirements may be used with lower headlamp beams as specified in Section 66-3-830B NMSA 1978.

C. Any motor vehicle may be equipped with not to exceed one auxiliary passing lamp mounted on the front at a height not less than twenty-four inches nor more than forty-two inches above the level surface upon which the vehicle stands. The provisions of Section 66-3-830 NMSA 1978 shall apply to any combination of headlamps and auxiliary passing lamps.

D. Any motor vehicle may be equipped with not to exceed one auxiliary driving lamp mounted on the front at a height not less than sixteen inches nor more than forty-two inches above the level surface upon which the vehile [vehicle] stands. Any lighted auxiliary driving lamp shall be turned off at least five hundred feet from approaching motor vehicles. The provisions of Section 66-3-830 NMSA 1978 shall apply to any combination of headlamps and auxiliary driving lamp.

**History:** 1953 Comp., § 64-3-827, enacted by Laws 1978, ch. 35, § 133.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material in Subsection D was inserted by the compiler and it is not part of the law.

## 66-3-828. Signal lamps and signal devices.

A. Any motor vehicle, trailer, semitrailer and house trailer may be equipped and when required under Sections 66-3-801 through 66-3-887 NMSA 1978 shall be equipped with the following signal lamps or devices:

(1) stop lamp or stop lamps on the rear which shall emit a red, amber or yellow light and which shall be actuated upon application of the service brakes and which may but need not be incorporated with one or more other rear lamps; and

(2) lamp or lamps or mechanical signal device capable of clearly indicating any intention to turn either to the right or to the left and which shall be visible both from the front and rear.

B. Every stop lamp shall be plainly visible and understandable from a distance of one hundred feet to the rear both during normal sunlight and at nighttime and a signal lamp or lamps indicating intention to turn shall be visible and understandable during daytime and nighttime from a distance of one hundred feet both to the front and rear. When a vehicle is equipped with a stop lamp or other signal lamps, such lamp or lamps shall at all times be maintained in good working condition. No stop lamp or signal lamp shall project a glaring or dazzling light.

C. All mechanical signal devices shall be self-illuminated when in use at the times mentioned in Section 66-3-802 NMSA 1978.

**History:** 1953 Comp., § 64-3-828, enacted by Laws 1978, ch. 35, § 134.

**ANNOTATIONS**

**Cross references.** — For general definitions, *see* 66-1-4 to 66-1-4.20 NMSA 1978.

## 66-3-829. Additional lighting equipment.

A. Any motor vehicle may be equipped with not more than two side cowl or fender lamps which shall emit an amber or white light without glare.

B. Any motor vehicle may be equipped with not more than one running-board courtesy lamp on each side thereof which shall emit a white or amber light without glare.

C. Any motor vehicle may be equipped with not more than two back-up lamps either separately or in combination with other lamps, but any such back-up lamp shall not be lighted when the motor vehicle is in forward motion.

**History:** 1953 Comp., § 64-3-829, enacted by Laws 1978, ch. 35, § 135.

## 66-3-830. Multiple-beam road-lighting equipment.

Except as hereinafter provided, the headlamps or the auxiliary driving lamps or the auxiliary passing lamp, or combinations thereof, on motor vehicles shall be so arranged that the driver may select at will between distributions of light projected to different elevations and such lamps may, in addition, be so arranged that such selection can be made automatically, subject to the following limitations:

A. there shall be an uppermost distribution of light, or composite beam, so aimed and of such intensity as to reveal persons and vehicles at a distance of at least three hundred fifty feet ahead for all conditions of loading;

B. there shall be a lowermost distribution of light, or composite beam, so aimed and of sufficient intensity to reveal persons and vehicles at a distance of at least one hundred feet ahead; and on a straight level road under any condition of loading none of the high-intensity portion of the beam shall be directed to strike the eyes of an approaching driver; and

C. every new motor vehicle registered in this state after July 1, 1953, which has multiple-beam road-lighting equipment shall be equipped with a beam indicator, which shall be lighted whenever the uppermost distribution of light from the headlamps is in use, and shall not otherwise be lighted. The indicator shall be so designed and located that when lighted it will be readily visible without glare to the driver of the vehicle so equipped.

**History:** 1953 Comp., § 64-3-830, enacted by Laws 1978, ch. 35, § 136.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 190.

60 C.J.S. Motor Vehicles § 26; 60A C.J.S. Motor Vehicles § 263.

## 66-3-831. Use of multiple-beam road-lighting equipment.

Whenever a motor vehicle is being operated on a roadway or shoulder adjacent thereto during the times specified in Section 66-3-802 NMSA 1978, the driver shall use a distribution of light, or composite beam, directed high enough and of sufficient intensity to reveal persons and vehicles at a safe distance in advance of the vehicle, subject to the following requirements and limitations:

A. whenever the driver of a vehicle approaches an oncoming vehicle within five hundred feet, such driver shall use a distribution of light or composite beam so aimed that the glaring rays are not projected into the eyes of the oncoming driver;

B. the lowermost distribution of light specified in Section 66-3-830B NMSA 1978 shall be deemed to avoid glare at all times, regardless of road contour and loading; and

C. whenever the driver of a vehicle overtakes another vehicle proceeding in the same direction and within two hundred feet, such driver shall use a distribution of light or composite beam so aimed that the glaring rays are not projected through the rear window of the overtaken vehicle.

**History:** 1953 Comp., § 64-3-831, enacted by Laws 1978, ch. 35, § 137.

**ANNOTATIONS**

**Cross references.** — For the penalty assessment for violation, *see* 66-8-116 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 190.

Duty and liability of vehicle driver blinded by glare of lights, 22 A.L.R.2d 292, 64 A.L.R.3d 551, 64 A.L.R.3d 760.

Contributory negligence of driver or occupant of motor vehicle being driven or parked without dimming lights, 63 A.L.R.3d 824.

60A C.J.S. Motor Vehicles § 309.

## 66-3-832. Single-beam road-lighting equipment.

Headlamps arranged to provide a single distribution of light shall be permitted on motor vehicles manufactured and sold prior to July 1, 1953, in lieu of multiple-beam road-lighting equipment herein specified if the single distribution of light complies with the following requirements and limitations:

A. the headlamps shall be so aimed that when the vehicle is not loaded none of the high-intensity portion of the light shall at a distance of twenty-five feet ahead project higher than a level of five inches below the level of the center of the lamp from which it comes, and in no case higher than forty-two inches above the level on which the vehicle stands at a distance of seventy-five feet ahead; and

B. the intensity shall be sufficient to reveal persons and vehicles at a distance of at least two hundred feet.

**History:** 1953 Comp., § 64-3-832, enacted by Laws 1978, ch. 35, § 138.

## 66-3-833. Alternate road-lighting equipment.

Any motor vehicle may be operated under the conditions specified in Section 66-3-802 NMSA 1978 when equipped with the two lighted lamps upon the front thereof capable of revealing persons and objects seventy-five feet ahead in lieu of lamps

required in Section 66-3-830 NMSA 1978 or Section 66-3-832 NMSA 1978; provided, however, that at no time shall it be operated at a speed in excess of twenty miles an hour.

**History:** 1953 Comp., § 64-3-833, enacted by Laws 1978, ch. 35, § 139.

## 66-3-834. Number of driving lamps required or permitted.

A. At all times specified in Section 66-3-802 NMSA 1978, at least two lighted lamps shall be displayed, one on each side at the front of every motor vehicle other than a motorcycle, except when such vehicle is parked subject to the regulations governing lights on parked vehicles.

B. Whenever a motor vehicle equipped with headlamps as herein required is also equipped with any auxiliary lamp or spot lamps or any other lamp on the front thereof projecting a beam of intensity greater than three hundred candle power, not more than a total of four of any such lamps on the front of a vehicle shall be lighted at any one time when upon a highway.

**History:** 1953 Comp., § 64-3-834, enacted by Laws 1978, ch. 35, § 140; 1981, ch. 361, § 16.

**ANNOTATIONS**

**Cross references.** — For definitions of "moped" and "motorcycle", *see* 66-1-4.11 NMSA 1978.

## 66-3-835. Special restrictions on lamps.

A. Lighted lamps or illuminating devices upon a motor vehicle, other than headlamps, spot lamps, auxiliary lamps, flashing turn signals, emergency vehicle warning lamps and school bus warning lamps, that project a beam of light of an intensity greater than three hundred candle power shall be directed so that no part of the high-intensity portion of the beam strikes the level of the roadway on which the vehicle stands at a distance of more than seventy-five feet from the vehicle.

B. A person shall not drive or move upon a highway a vehicle or equipment with a lamp or device displaying a red light visible from directly in front of the center of the vehicle or equipment, except as expressly authorized or required by the Motor Vehicle Code.

C. Flashing lights are prohibited except as provided in this section and except on authorized emergency vehicles, school buses, snow-removal equipment and highway-marking equipment. Except as otherwise provided in this section, flashing red lights may be used as warning lights on disabled or parked vehicles and on any vehicle as a means of indicating a turn.

D. A recovery or repair vehicle standing on a highway for the purpose of removing, and actually engaged in removing, a disabled vehicle may display flashing lights in any color except red. This provision shall not be construed as permitting the use of flashing lights by recovery or repair vehicles in going to or returning from the location of disabled vehicles or while engaged in towing a disabled vehicle.

E. Only fire department vehicles, law enforcement agency vehicles, ambulances and school buses may display flashing red lights visible from the front of the vehicle. All other vehicles authorized by the Motor Vehicle Code to display flashing lights visible from the front of the vehicle may use any other color of light that is visible.

**History:** 1953 Comp., § 64-3-835, enacted by Laws 1978, ch. 35, § 141; 2017, ch. 75, § 1; 2019, ch. 145, § 1.

## ANNOTATIONS

**Cross references.** — For authorized emergency vehicles, *see* 66-7-6 NMSA 1978.

**The 2019 amendment,** effective July 1, 2019, prohibited recovery and repair vehicles from using flashing lights unless they are stopped on a roadway engaged in removing a disabled vehicle; and in Subsection D, after the first occurrence of "disabled vehicle", deleted "and while engaged in towing a disabled vehicle", and after "the location of disabled vehicles", deleted "unless actually" and added "or while".

**The 2017 amendment,** effective June 16, 2017, restricted the use of red flashing lights by certain motor vehicles; in Subsection B, deleted "No" and added "A", after "shall", added "not", after "move upon", deleted "any" and added "a", after "highway", deleted "any" and added "a", after "vehicle or equipment,", deleted "This section does not apply to any vehicle upon which a red light visible from the front is" and added "except as"; in Subsection C, after "as provided in", deleted "Subsection D of", and added "Except as otherwise provided in this section"; in Subsection D, deleted "Tow cars" and added "A recovery or repair vehicle", after "standing on", deleted "highways" and added "a highway", after "engaged in removing", added "a", after "disabled", deleted "vehicles" and added "vehicle", after "engaged in towing", deleted "any" and added "a", after "display flashing lights", added "in any color except red", after "This", added "provision", and after "use of flashing lights by", deleted "tow cars" and added "recovery or repair vehicles"; and in Subsection E, after "school buses", deleted "shall" and added "may".

**Front mounted red lights permitted on volunteer fire department member's vehicles.** — Privately owned vehicles, used by members of a volunteer fire department in carrying out their duties in connection with such a fire department, may properly be defined as "fire department vehicles," and as such are authorized to have flashing red lights on the front as provided for by Section 64-20-36E, 1953 Comp. (similar to this section). 1969 Op. Att'y Gen. No. 69-71.

**Corporation commission (now public regulation commission) inspector's automobile cannot have flashing lights.** — In the absence of a designation of the vehicle as an authorized emergency vehicle in compliance with Section 64-15-5, 1953 Comp. (similar to Section 66-7-6 NMSA 1978), the automobile utilized by any corporation commission (now public regulation commission) inspector may not have sirens and flashing lights installed thereon. 1961 Op. Att'y Gen. No. 61-40.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 60A C.J.S. Motor Vehicles § 340.

## 66-3-836. Standards for lights on snow-removal equipment.

A. The state transportation commission shall adopt standards and specifications applicable to headlamps, clearance lamps, identification and other lamps on snow-removal equipment when operated on the highways of this state in lieu of the lamps otherwise required on motor vehicles by Sections 66-3-801 through 66-3-887 NMSA 1978. The standards and specifications may permit the use of flashing lights for purposes of identifications on snow-removal equipment when in service upon the highways. The standards and specifications for lamps referred to in this section shall correlate with and, so far as possible, conform with those approved by the American association of state highway officials.

B. It is unlawful to operate any snow-removal equipment on any highway unless the lamps on the equipment comply with and are lighted when and as required by the standards and specifications adopted as provided in this section.

**History:** 1953 Comp., § 64-3-836, enacted by Laws 1978, ch. 35, § 142; 2003, ch. 142, § 8.

**ANNOTATIONS**

**The 2003 amendment,** effective July 1, 2003, substituted "transportation commission" for "highway commission" and substituted "66-3-801 through 66-3-887 NMSA 1978" for "64-3-801 through 64-3-887 NMSA 1953" in Subsection A.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Liability for injury or damage caused by snowplowing or snow removal operations and equipment, 83 A.L.R.4th 5.

## 66-3-837. Selling or using lamps or equipment.

A. On and after January 1, 1954, no person shall have for sale, sell or offer for sale for use upon or as a part of the equipment of a motor vehicle, trailer or semitrailer, or use upon any such vehicle any headlamp, auxiliary, or fog lamp, or reflector which reflector is required hereunder, or parts of any of the foregoing which tend to change the original design or performance, unless of a type which has been submitted to the director and approved by him. The foregoing provisions of this section shall not apply to equipment in actual use when this section is adopted or replacement parts therefor.

B. No person shall have for sale, sell or offer for sale for use upon or as a part of the equipment of a motor vehicle, trailer or semitrailer any lamp or device mentioned in this section which has been approved by the director unless such lamp or device bears thereon the trademark or name under which it is approved so as to be legible when installed.

C. No person shall use upon any motor vehicle, trailer or semitrailer any lamps mentioned in this section unless said lamps are mounted, adjusted and aimed in accordance with instructions of the director.

**History:** 1953 Comp., § 64-3-837, enacted by Laws 1978, ch. 35, § 143.

**ANNOTATIONS**

**Cross references.** — For general definitions applicable to this section, *see* 66-1-4 to 66-1-4.20 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Driving motor vehicle without lights or with improper lights as affecting liability for collision, 21 A.L.R.2d 7, 62 A.L.R.3d 560, 62 A.L.R.3d 771, 62 A.L.R.3d 844.

Driving motor vehicle without lights or with improper lights as gross negligence or the like warranting recovery by guest under guest statute or similar common-law rule, 21 A.L.R.2d 209.

## 66-3-838. Authority of director with reference to safety and lighting devices.

A. The director is hereby required to approve or disapprove lighting and other safety devices mentioned in Sections 66-3-801 through 66-3-887 NMSA 1978 and shall be guided in doing so by national authorities including the Society of Automotive Engineers. In approving lighting devices, the director shall also be guided by the headlamp standards established by the United Nations' agreement concerning the adoption of approval and reciprocal recognition of approval for motor vehicle equipment and parts done at Geneva on March 20, 1958, as amended and adopted by Canadian Standards Association (CSA Standard D106.2).

B. The director is hereby required to approve or disapprove any lighting and safety device of a type on which approval is required in Sections 66-3-801 through 66-3-887 NMSA 1978 within a reasonable time after such device has been submitted.

C. The director is further authorized to set up the procedure which shall be followed when any device is submitted for approval.

D. The director upon approving any such lamp or device shall issue to the applicant a certificate of approval together with any instructions determined by him.

E. The director shall publish lists of all lamps and devices by name and type which have been approved by him, together with instructions as to the permissible candle power rating of the bulbs which he has determined for use therein and such other instructions as to adjustment as the director may deem necessary.

**History:** 1953 Comp., § 64-3-838, enacted by Laws 1978, ch. 35, § 144; 1981, ch. 43, § 1.

## 66-3-839. Revocation of certificate of approval on safety and lighting devices.

A. When the director has reason to believe that an approved device as being sold commercially does not comply with the requirements of Sections 66-3-801 through 66-3-887 NMSA 1978, he may, after giving thirty days' previous notice to the person holding the certificate of approval for such device in this state, conduct a hearing upon the question of compliance of said approved device. After said hearing the director shall determine whether said approved device meets such requirements. If said device does not meet the requirements, he shall give notice to the person holding the certificate of approval for such device in this state.

B. If at the expiration of ninety days after such notice the person holding the certificate of approval for such device has failed to satisfy the director that said approved device as thereafter to be sold meets the requirements, the director shall suspend or revoke the approval issued therefor until or unless such device is resubmitted to and retested by an authorized testing agency and is found to meet the requirements, and may require that all said devices sold since the notification following the hearing be replaced with devices that do comply with the requirements. The director may at the time of the retest purchase in the open market and submit to the testing agency one or more sets of such approved devices, and if such device upon such retest fails to meet the requirements, the director may refuse to renew the certificate of approval of such device.

**History:** 1953 Comp., § 64-3-839, enacted by Laws 1978, ch. 35, § 145.

## 66-3-840. Brakes.

A. Brake equipment is required as follows:

(1) every motor vehicle other than a motorcycle when operated upon a highway shall be equipped with brakes adequate to control the movement of and to stop and hold the vehicle, including two separate means of applying the brakes, each of which is effective to apply the brakes to at least two wheels. If these two separate means of applying the brakes are connected in any way, they shall be so constructed that failure of any one part of the operating mechanism does not leave the motor vehicle without brakes on at least two wheels;

(2) every motorcycle when operated upon a highway shall be equipped with at least two brakes that may be operated by hand or foot;

(3) every bus, truck, truck tractor, road tractor, trailer and semitrailer and pole trailer shall be equipped with brakes on all wheels in contact with road surfaces except:

(a) trailers, semitrailers and pole trailers of a gross vehicle weight of less than three thousand pounds;

(b) any vehicle being towed in a driveaway-towaway operation; provided, the combination of vehicles is capable of complying with the performance requirements of Subsection B of this section;

(c) trucks, truck tractors and road tractors having three or more axles need not have brakes on the front wheels except when the vehicles are equipped with at least two steerable axles, the wheels of one axle need not be equipped with brakes;

(d) house-moving dollies subject to regulations adopted by the secretary of transportation under the Motor Transportation Act [Chapter 65, Articles 1, 3 and 5 NMSA 1978]; and

(e) motor vehicles of the types named in Paragraphs (1) through (3) of this subsection manufactured prior to July 1, 1963;

(4) every house trailer of a gross vehicle weight in excess of three thousand pounds registered in this state shall be equipped with brakes on at least two wheels in contact with road surfaces. Every house trailer of a gross vehicle weight of three thousand pounds or more when operated upon a highway or roadway shall be equipped with brakes adequate to control the movement of and to stop and to hold the vehicle and so designed as to be applied by the driver of the towing motor vehicle;

(5) every bus, truck, road tractor or truck tractor shall be equipped with parking brakes capable of locking the rear driving wheels and adequate under any condition of loading to hold, to the limit of traction of the braked wheels, the vehicle or combination of vehicles to which the motor vehicle may be attached. The operating controls of the parking brakes shall be independent of the operating controls of the service brakes;

(6) in any combination of motor-drawn vehicles, means shall be provided for applying the rearmost trailer brakes of any trailer equipped with brakes in approximate synchronism with the brakes on the towing vehicle and developing the required braking effort on the rearmost wheels at the fastest rate, or means shall be provided for applying braking effort first on the rearmost trailer equipped with brakes, or both of the above means capable of being used alternatively may be employed; and

(7) the brake shoes operating within or upon the drums on the vehicle wheels of any motor vehicle may be used for both service and hand operation.

B. Every motor vehicle or combination of motor-drawn vehicles shall be capable at all times, and under all conditions of loading, of being stopped on a dry, smooth, level road, free from loose material, upon application of the service brake within the distance specified in this subsection or shall be capable of being decelerated at a sustained rate corresponding to these distances:

| | Feet to stop from 20 miles per hour | Deceleration in feet per second |
|---|---|---|
| Vehicles or combinations of vehicles having brakes on all wheels..... | 30 | 14 |
| Vehicles or combinations of vehicles not having brakes on all wheels..... | 40 | 10.7. |

C. All brakes shall be maintained in good working order and shall be so adjusted as to operate as equally as practicable with respect to the wheels on opposite sides of the vehicle.

**History:** 1953 Comp., § 64-3-840, enacted by Laws 1978, ch. 35, § 146; 2007, ch. 319, § 34.

## ANNOTATIONS

**Cross references.** — For definition of "driveaway-towaway operation", *see* 66-1-4.4 NMSA 1978.

**The 2007 amendment,** effective June 15, 2007, made non-substantive language changes.

**Duty of maintaining brakes in proper condition** is placed upon owner, and if the brakes do not meet the standard set by the statute, and such failure is not excused, the owner is guilty of negligence in permitting the automobile on the highway in such condition. *Ferran v. Jacquez*, 1961-NMSC-072, 68 N.M. 367, 362 P.2d 519.

**Owner of vehicle not meeting minimum standards negligent if unexcused.** — Section 64-20-41, 1953 Comp. (similar to this section) sets the minimum standards required for brakes and that an owner of a vehicle is guilty of negligence in permitting a vehicle on the highway with brakes which do not meet the standard set by statute, unless such failure is excused. *Roybal v. Lewis*, 1968-NMSC-068, 79 N.M. 227, 441 P.2d 756.

**Once violation shown, burden on violator to prove reasonableness.** — Once the plaintiff has shown the statutory violation, the violation is sufficient evidence to defeat a motion for a directed verdict and defendant then has the burden of coming forward and showing lack of knowledge of the defective condition as a reasonable man which would relieve him of the responsibility placed upon him by the provision. *Goodman v. Venable*, 1971-NMCA-031, 82 N.M. 450, 483 P.2d 505; Ferran v. Jacquez, 1961-NMSC-072, 68 N.M. 367, 362 P.2d 519.

**Brakes for construction equipment.** — Construction equipment which is being pulled over the highway is required to be equipped with brakes pursuant to Section 64-20-41, 1953 Comp. (similar to this section), but construction equipment which is permanently attached to wheels is not specifically required to have brakes on all wheels. 1967 Op. Att'y Gen. No. 67-94.

**Permits for movement of certain trucks.** — State highway commission [state transportation commission] cannot legally issue permits for movement of trucks in drive-away-towaway saddle mount combinations of more than one towed vehicle. 1959 Op. Att'y Gen. No. 59-38.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 187, 780 to 782.

Admissibility in evidence, in automobile negligence action, of charts showing braking distance, reaction times, etc., 9 A.L.R.3d 976.

60 C.J.S. Motor Vehicles § 26; 60A C.J.S. Motor Vehicles § 261.

## 66-3-841. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 2001, ch. 6, § 1 repealed 66-3-841 NMSA 1978, as enacted by Laws 1969, ch. 266, § 5, relating to the height of motorcycle handlebars, effective July 1, 2001. For provisions of former section, *see* the 2000 NMSA 1978 on *NMOneSource.com.*

## 66-3-842. Motorcycle maneuverability.

A. No motorcycle shall be equipped in a manner such that it is incapable of turning a ninety-degree angle within a circle having a radius of not more than fourteen feet. Evidence of a motorcycle's being unable to turn a ninety-degree angle within a circle having a radius of not more than fourteen feet shall be prima facie evidence of an unsafe vehicle as described in Section 66-3-801 NMSA 1978.

B. For the purposes of this section, a peace officer may require the driver of a motorcycle to demonstrate the ability of any motorcycle to be ridden as described in

Subsection A of this seciton [section]. Failure or refusal of any operator to demonstrate the ability of any motorcycle being operated upon the highways shall be prima facie evidence of an unsafe vehicle as described in Section 66-3-801 NMSA 1978.

**History:** 1953 Comp., § 64-3-842, enacted by Laws 1978, ch. 35, § 148.

## 66-3-843. Horns and warning devices.

A. Every motor vehicle when operated upon a highway shall be equipped with a horn in good working order and capable of emitting sound audible under normal conditions from a distance of not less than two hundred feet, but no horn or other warning device shall be used which does not produce a harmonious sound. The driver of a motor vehicle shall when reasonably necessary to ensure safe operation give audible warning with his horn but shall not otherwise use such horn when upon a highway.

B. No vehicle shall be equipped with nor shall any person use upon a vehicle any siren, whistle or bell except as otherwise permitted in this section.

C. It is permissible, but not required, that any commercial vehicle be equipped with a theft-alarm signal device which is so arranged that it cannot be used by the driver as an ordinary warning signal.

D. Any authorized emergency vehicle may be equipped with a siren, whistle or bell, capable of emitting sound audible under normal conditions from a distance of not less than five hundred feet and of a type approved by the division, but such siren shall not be used except when such vehicle is operated in response to an emergency call or in the immediate pursuit of an actual or suspected violator of the law, in which said latter events the driver of such vehicle shall sound said siren when reasonably necessary to warn pedestrians and other drivers of the approach thereof.

**History:** 1953 Comp., § 64-3-843, enacted by Laws 1978, ch. 35, § 149.

**ANNOTATIONS**

**Cross references.** — For authorized emergency vehicles, *see* 66-7-6 NMSA 1978.

For sounding horn when passing another vehicle, *see* 66-7-310 NMSA 1978.

For requirement to sound horn to warn pedestrians, *see* 66-7-337 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 193.

Duty and liability with respect to giving audible signal where driver's view ahead obstructed at curve or hill, 16 A.L.R.3d 897.

Duty and liability with respect to giving audible signal at intersection, 21 A.L.R.3d 268.

Duty and liability with respect to giving audible signal before passing, 22 A.L.R.3d 325.

Duty and liability with respect to giving audible signal upon approaching pedestrian, 24 A.L.R.3d 183.

60 C.J.S. Motor Vehicles § 26; 60A C.J.S. Motor Vehicles § 288.

## 66-3-844. Mufflers; prevention of noise; emission control devices.

A. Every motor vehicle shall at all times be equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise, and no person shall use a muffler cutout, bypass or similar device upon a motor vehicle on a highway.

B. The muffler, emission control equipment or device, engine and power mechanism of every motor vehicle shall be so equipped and adjusted as to prevent the escape of excessive fumes or smoke.

C. Every registered gasoline-fueled motor vehicle manufactured or assembled, commencing with the 1968 models, shall at all times be equipped and maintained in good working order with the factory-installed devices and equipment or their replacements designed to prevent, reduce or control exhaust emissions or air pollution.

**History:** 1941 Comp., § 68-2544, enacted by Laws 1953, ch. 139, § 152; 1953 Comp., § 64-20-44; Laws 1970, ch. 59, § 1; recompiled as 1953 Comp., § 64-3-844, by Laws 1978, ch. 35, § 150.

**ANNOTATIONS**

**Noise produced by "smitty" or "Hollywood" muffler** is such as could be classed as "excessive" or at least "unusual" within the meaning of this section. 1955 Op. Att'y Gen. No. 55-6204.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 194, 790.

Products liability: motor vehicle exhaust systems, 72 A.L.R.4th 62.

60 C.J.S. Motor Vehicles § 26; 60A C.J.S. Motor Vehicles § 260.

## 66-3-845. Mirrors.

Every motor vehicle shall be equipped with a mirror so located as to reflect to the driver a view of the highway for a distance of at least two hundred feet to the rear of such vehicle.

**History:** 1953 Comp., § 64-3-845, enacted by Laws 1978, ch. 35, § 151.

**ANNOTATIONS**

**Not having rear view mirror contributes to negligence per se.** — Where automobile had not been equipped with proper rear view mirror and driver had not signaled that he was reducing speed or stopping, and driver of truck which struck rear of automobile admitted he followed at distance of only 50 to 100 feet, both drivers were guilty of negligence per se and the accident proximately resulted from such negligence. *Pacific Greyhound Lines v. Alabam Freight Lines*, 1951-NMSC-051, 55 N.M. 357, 233 P.2d 1044.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 789.

Regulations requiring motor vehicles to be equipped with adequate mirrors, operation of, 27 A.L.R.2d 1040.

60 C.J.S. Motor Vehicles § 26; 60A C.J.S. Motor Vehicles § 287.

## 66-3-846. Windshields must be unobstructed and equipped with wipers; windows must be transparent; exception.

A. No person shall drive any motor vehicle with any sign, poster or other nontransparent material upon or in the front windshield, the windows to the immediate right and left of the driver or the rearmost window if the latter is used for driving visibility, except as provided in Section 66-3-846.1 NMSA 1978. The rearmost window is not necessary for driving visibility where outside rearview mirrors are attached to the vehicle.

B. The windshield on every motor vehicle except a motorcycle shall be equipped with a device for cleaning rain, snow or other moisture from the windshield, which device shall be so constructed as to be controlled or operated by the driver of the vehicle.

C. Every windshield wiper upon a motor vehicle shall be maintained in good working order.

D. A person who violates the provisions of this section is guilty of a penalty assessment misdemeanor.

**History:** 1953 Comp., § 64-3-846, enacted by Laws 1978, ch. 35, § 152; 1997, ch. 151, § 1; 2018, ch. 74, § 32.

**ANNOTATIONS**

**The 2018 amendment,** effective July 1, 2018, provided a penalty for any violation of this section, and made technical changes; and added Subsection D.

**The 1997 amendment,** effective July 1, 1997, added "exception" to the section heading and added the exception at the end of the first sentence in Subsection A.

**Sign attached to trailer** — A lighted plastic advertising sign, approximately four feet-four inches in length and two feet-three inches in height, to be installed on the front of a trailer and held by braces is permissible as long as the sign does not obstruct the view of the driver. 1960 Op. Att'y Gen. No. 60-89.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 185, 803.

60 C.J.S. Motor Vehicles § 26; 60A C.J.S. Motor Vehicles § 260.

## 66-3-846.1. Sun screening material on windshields and windows; requirements; violation; penalty.

A. A person shall not operate on any street or highway a motor vehicle that is registered or required to be registered in this state if that motor vehicle has a sun screening material on the windshield or any window that does not comply with the requirements of this section.

B. Except as otherwise provided in this section, a sun screening material:

(1) when used in conjunction with the windshield, shall be nonreflective, shall not be red, yellow or amber in color and shall be used only along the top of the windshield, not extending downward beyond the ASI line or more than five inches from the top of the windshield, whichever is closer to the top of the windshield; and

(2) when used in conjunction with the safety glazing materials of the side wings or side windows located at the immediate right and left of the driver, the side windows behind the driver and the rearmost window shall be nonreflective, shall have a light transmission of not less than twenty percent and shall be used only on the windows of a motor vehicle equipped with one right and one left outside rearview mirror.

C. Each manufacturer shall:

(1) certify to the division that a sun screening material used by that manufacturer is in compliance with the nonreflectivity and light transmission requirements of this section;

(2) provide a label not to exceed one and one-half square inches in size that:

(a) is installed permanently and legibly between the sun screening material and each glazing surface to which it is applied;

(b) contains the manufacturer's name, the date that the sun screening material was manufactured and the percentage of light transmission; and

(c) is placed in the left lower corner of each glazing surface when facing the motor vehicle from the outside; and

(3) include instructions with the sun screening material for proper installation, including the affixing of the label specified in this subsection.

D. A person shall not:

(1) offer for sale or for use any sun screening material for motor vehicle use not in compliance with this section; or

(2) install any sun screening material on motor vehicles intended for operation on any street or highway without permanently affixing the label specified in Subsection C of this section.

E. The provisions of this section do not apply to a motor vehicle registered in this state in the name of a person, or the person's legal guardian, who has an affidavit signed by a physician or an optometrist licensed to practice in this state that states that the person has a physical condition that makes it necessary to equip the motor vehicle with sun screening material that is in violation of this section. The affidavit shall be in the possession of the person with such a physical condition, or the person's legal guardian, at all times while being transported in the motor vehicle.

F. The light transmission requirement of this section does not apply to windows behind the driver on truck tractors, buses, recreational vehicles, multipurpose passenger vehicles or motor homes. The provisions of this section shall not apply to motor vehicle glazing that complies with federal motor vehicle standards.

G. The provisions of this section do not apply to motor vehicles that have sun screening material on the windshield or any window prior to July 1, 1997.

H. As used in this section:

(1) "light transmission" means the ratio of the amount of total light that passes through a product or material, expressed in percentages, to the amount of the total light falling on the product or material;

(2) "manufacturer" means any person engaged in the manufacturing or assembling of sun screening products or materials designed to be used in conjunction with motor vehicle glazing materials for the purpose of reducing the effects of the sun;

(3) "nonreflective" means designed to absorb light rather than to reflect it; and

(4) "sun screening material" means any film material, substance, device or product that is designed to be used in conjunction with motor vehicle safety glazing materials for reducing the effects of the sun.

I. A person who violates a provision of this section is guilty of a penalty assessment misdemeanor.

**History:** 1978 Comp., § 66-3-846.1, enacted by Laws 1997, ch. 151, § 2; 2018, ch. 74, § 33.

**ANNOTATIONS**

**The 2018 amendment,** effective July 1, 2018, reduced the penalty for a violation of the provisions of this section to a penalty assessment misdemeanor, and made technical changes; in Subsection G, after "prior to", deleted "the effective date of this section" and added "July 1, 1997"; and in Subsection I, after "is guilty of a", deleted "petty" and added "penalty assessment", and after "misdemeanor", deleted "and upon conviction shall be punished by a fine of not more than seventy-five dollars ($75.00)".

## 66-3-847. Restrictions as to tire equipment.

A. When use is permitted, every solid rubber tire on a vehicle shall have rubber on its entire traction surface at least one-inch thick above the edge of the flange of the entire periphery.

B. A person shall not operate or move on a highway a motor vehicle, trailer or semitrailer having any tire surface in contact with the roadway that is wholly or partly of metal or other hard nonresilient material, except a snow tire with metal studs designed to increase traction on ice or snow.

C. No tire on a vehicle moved on a highway shall have on its periphery a block, flange, cleat or spike or any other protuberance of any material other than rubber that projects beyond the tread of the traction surface of the tire. However, it shall be permissible to use farm machinery with tires having protuberances that will not injure the highway and tire chains of reasonable proportions or snow tires with metal studs designed to increase traction on ice or snow upon any vehicle when required for safety because of snow, ice or other conditions tending to cause a vehicle to skid.

D. The state transportation commission and local authorities, in their respective jurisdictions, may, in their discretion, issue special permits authorizing the operation upon a highway of traction engines or tractors having movable tracks with transverse corrugations upon the periphery of the movable tracks or farm tractors or other farm machinery that would otherwise be prohibited under the Motor Vehicle Code [66-1-1 NMSA 1978].

E. A vehicle equipped with solid rubber or cushion tires shall not be permitted upon any highway of this state without special permission from the state transportation commission or the local authority having jurisdiction over the highway affected, and in no event may any such vehicle be operated at a speed in excess of that specified by law.

**History:** 1953 Comp., § 64-3-847, enacted by Laws 1978, ch. 35, § 153; 2003, ch. 142, § 9; 2007, ch. 319, § 35.

**ANNOTATIONS**

**The 2007 amendment,** effective June 15, 2007, provided that a person shall not operate a motor vehicle or a trailer on a highway that has any tire surface in contact with the highway that is wholly or partly of metal or other hard nonresilient material.

**The 2003 amendment,** effective July 1, 2003, substituted "transportation commission" for "highway commission" in Subsections D and E.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 783.

Liability of motor vehicle owner or operator for accident occasioned by blowout or other failure of tire, 24 A.L.R.2d 161.

60 C.J.S. Motor Vehicles § 26; 60A C.J.S. Motor Vehicles § 260.

## 66-3-848. Safety glazing materials in motor vehicles.

A. No motor vehicle sold as new on or after January 1, 1954, shall be registered in this state on or after that date unless it is equipped with safety glazing material of a type approved by the director wherever glazing material is used in doors, windows or windshields; nor shall any new motor vehicle be sold in this state after such date unless it complies with this requirement. The foregoing provisions shall apply to all passenger-type motor vehicles including passenger buses and school buses, but in respect to trucks, including truck tractors, the requirements as to safety glazing material shall apply to all glazing material used in doors, windows and windshields in the driver's compartments of such vehicles.

B. The term "safety glazing materials" means glazing materials so constructed, treated or combined with other materials as to reduce substantially, in comparison with ordinary sheet glass or plate glass, the likelihood of injury to persons by objects from exterior sources or by these safety glazing materials when they may be cracked or broken.

C. The director shall compile and publish a list of types of glazing material by name approved by him as meeting the requirements of this section and the director shall not

register after January 1, 1954, any motor vehicle which is subject to the provisions of this section unless it is equipped with an approved type of safety glazing material, and he shall thereafter suspend the registration of any motor vehicle so subject to this section which he finds is not so equipped until it is made to conform to the requirements of this section.

D. On and after January 1, 1954, it shall be unlawful for any person to replace any glass in any vehicle or portion thereof, which under the provisions of Subsection A of this section must be equipped with safety glazing material, with any material other than safety glazing material of a type approved by the director.

**History:** 1953 Comp., § 64-3-848, enacted by Laws 1978, ch. 35, § 154.

**ANNOTATIONS**

**Cross references.** — For general definitions applicable to this section, *see* 66-1-4 to 66-1-4.20 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 60 C.J.S. Motor Vehicles § 26.

## 66-3-849. Certain vehicles to carry flares or other warning devices.

On every bus, truck, truck tractor, road tractor and every driven vehicle in driveaway-towaway operation, of a width greater than eighty inches, except buses operating wholly within a municipality, there shall be:

A. one of the following combinations of warning devices:

(1) three flares or liquid-burning pot torches and three fusees and two red cloth flags; or

(2) three red electric lanterns, two red cloth flags and three fusees; or

(3) three red emergency reflectors, two red cloth flags and three fusees;

(4) flares or pot torches, fusees, oil lanterns or any signal produced by a flame, shall not be carried on motor vehicles used in the transportation of explosives, flammable liquids or flammable compressed gases in cargo tanks, or in any motor vehicle using flammable compressed gases as a motor fuel; but in lieu of such flares and fusees, three electrical lanterns or three red emergency reflectors shall be carried; and

(5) the protective devices used shall comply with the requirements of Subsections A through F of this section;

B. flares or pot torches which shall be adequate and reliable and shall comply with the requirements approved by the director;

C. red electric lanterns which shall be adequate, reliable, equipped with a battery or batteries within each unit, and shall comply with the requirements approved by the director;

D. red emergency reflectors, each of which shall conform in all respects with the following requirements:

(1) each reflector shall be composed of at least two reflecting elements or surfaces, front and back; the reflecting elements, front and back, shall be approximately parallel;

(2) if the reflector or the reflecting elements are so designed or constructed that the reflecting surfaces would be adversely affected by dust, soot, or other foreign matter, or contact with other parts of the reflector or its container, then such reflecting surfaces shall be adequately sealed within the body of the reflector;

(3) every reflector shall be so constructed that, when the reflector is properly placed, every reflecting element or surface is in a plane perpendicular to the plane of the roadway surface. Reflectors which are collapsible shall be provided with means for locking the reflector elements or surfaces in the required position; such locking means shall be readily capable of adjustment without the use of tools or special equipment;

(4) every reflector shall be of such weight and dimensions as to remain stationary when subjected to a forty mile-per-hour wind when properly placed on any clean, dry, paved road surface. The reflector shall be so constructed as to withstand reasonable shocks without breakage; and

(5) each set of reflectors and the reflecting elements or surfaces incorporated therein shall be adequately protected by enclosure in a box, or other adequate container especially designed and constructed so that the reflectors may be readily extracted for use;

E. fusees which shall be adequate, reliable, capable of burning at least fifteen minutes, and shall be equal to the specifications of the Bureau of Explosives, 30 Vesey Street, New York 7, New York, dated December 15, 1944, and be so marked; and

F. red cloth flags which shall be not less than twelve inches square, with standards adequate to maintain the flags in an upright position.

**History:** 1953 Comp., § 64-3-849, enacted by Laws 1978, ch. 35, § 155.

## ANNOTATIONS

**Cross references.** — For general definitions applicable to this section, *see* 66-1-4 to 66-1-4.20 NMSA 1978.

For duty to display lights on parked vehicle, *see* 66-3-825 NMSA 1978.

For emergency signals generally, *see* 66-3-853 to 66-3-857 NMSA 1978.

**Signals must be placed at least 100 feet from vehicle.** — Court should instruct the jury that signals shall be placed at least 100 feet in front of and to the rear of disabled vehicles and that the distance is left to the discretion of the driver whenever the vehicle is stopped in any manner when the distance of 100 feet is not ample warning. *Zanolini v. Ferguson-Steere Motor Co.*, 1954-NMSC-012, 58 N.M. 96, 265 P.2d 983.

**Negligence per se for lack of equipment.** — Failure to equip a truck with flares, fusees and flags and to put such devices out when a truck becomes disabled on the highway is negligence per se. *Trefzer v. Stiles*, 1952-NMSC-044, 56 N.M. 296, 243 P.2d 605.

**Negligence per se to park truck on paving at night.** — Defendants, through their agent, were negligent per se by parking truck partially on paving at night without immediately putting out warning flares as required by law, ample room being available for parking safely off the pavement. *Hisaw v. Hendrix*, 1950-NMSC-015, 54 N.M. 119, 215 P.2d 598.

**Stopping truck on highway and backing up unsafely is negligence per se.** — Where driver stopped truck without displaying flares, on main portion of highway at point where it was not impracticable to have parked off the pavement, and backed truck up without observing whether it could be done with safety, the violation of statutory provisions constituted negligence per se. *Chandler v. Battenfield*, 1951-NMSC-054, 55 N.M. 361, 233 P.2d 1047.

**Reflector can be used in place of fusee or lantern.** — Section 64-20-53, 1953 Comp. (similar to Section 66-3-853 NMSA 1978) means that the placing of a red emergency reflector may be used in place of a lighted fusee and a lighted red electric lantern. *Terrel v. Lowdermilk*, 1964-NMSC-073, 74 N.M. 135, 391 P.2d 419.

**Proof of defective battery not proof of improper lighting.** — Fact that truck was equipped with a defective battery after an accident does not necessarily mean that the proper lights were not burning on the truck or that the battery was defective prior to an emergency stop. *Terrel v. Lowdermilk*, 1964-NMSC-073, 74 N.M. 135, 391 P.2d 419.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Negligence or contributory negligence of driver or occupant of motor vehicle parked or stopped on highway without flares, 67 A.L.R.2d 12.

60A C.J.S. Motor Vehicles § 335.

## 66-3-850. Buses; additional emergency equipment.

On every bus, except buses engaged in driveaway-towaway operations, school buses and buses operating wholly within a municipality, there shall be:

A. at least one fire extinguisher with physical characteristics and fire extinguishing ability equivalent to or better than fire extinguishers which qualify under Classification B of the standards of the Underwriters' Laboratories, Incorporated. The extinguisher shall utilize an extinguishing agent which does not need protection from freezing and shall be properly filled and securely mounted in a bracket. The minimum size shall be one and one-half quart carbon tetrachloride type, four-pound carbon dioxide type, four-pound dry chemical type or extinguishing capacity equivalent to any of these types. Two extinguishers may be carried to obtain the capacity required. This requirement does not apply to any bus having a seating capacity of eight or less persons;

B. one hand axe, except for buses having a seating capacity of eight or less persons; and

C. one first-aid kit complying with the following requirements:

(1) the kit shall be of a heavy-duty ten-unit type or larger, or have contents at least equivalent in quality and number to its contents;

(2) the case and the cover shall be substantially constructed of sheet steel, wood, fiber or other durable material. If made of sheet steel, the case and cover shall be of metal at least number twenty-four U.S. gauge, nominal;

(3) the case and cover shall be constructed, including corners, covers and closure means, so that it is reasonably dust and weather proof when the cover is closed, or the kit shall be mounted in a protected location within the passenger compartment of the bus so as to be reasonably dust and weather proof;

(4) if made of sheet metal or other metals, the case shall be designed and constructed so that the cover can be easily opened to an angle of ninety degrees to one hundred degrees of arc with the case, and a substantial stop shall be provided at the angle of full opening without interfering with the smooth operation of the cover;

(5) if made of metal, the cover shall be attached to the case by at least two substantial hinges or by a continuous piano-type hinge. If nonmetallic, the cover shall be attached by either a sliding or a hinged joint; if hinged, it shall be as prescribed for metallic construction;

(6) the dimensions of the case shall permit the contents to be easily extracted and yet maintain the contents in a relatively fixed position; and

(7) the kit shall contain at least the contents specified, in not less than the quantities shown, in either of the two following types of kits:

| UNIT-TYPE KIT | |
|---|---|
| 4-inch bandage compress | 1 package |
| 2-inch bandage compress | 1 package |
| 1-inch bandage compress | 1 package |
| 40-inch triangular bandage with 2 safety pins | 1 package |
| burn ointment | 1 package |
| iodine applicator, or applicator of other antiseptic solutions of at least equivalent antibacterial properties | 1 package |
| wire splint | 1 package |
| tourniquet | 1 package |
| COMMERCIAL-TYPE KIT | |
| 3-inch by 2-inch sterile gauze pads | packages of 12 |
| 4-inch by 10 yards roller gauze bandage (must be replaced by unopened package after being opened) | 1 package |
| 3/4-inch adhesive compress | packages of 24 |
| 1-inch triangular bandage with 2 safety pins | 1 package |
| burn ointment | 1-ounce tube |
| iodine applicator or applicator of other antiseptic solution of at least equivalent antibacterial properties | 1 package |
| wire splint | 1 package |
| tourniquet | 1 package |
| scissors | 1. |

**History:** 1953 Comp., § 64-3-850, enacted by Laws 1978, ch. 35, § 156.

**ANNOTATIONS**

**Cross references.** — For the definition of "bus", *see* 66-1-4.2 NMSA 1978.

For the definition of "school bus", *see* 66-1-4.16 NMSA 1978.

## 66-3-851. Meaning of term "motor vehicle" as used in Sections 66-3-852 through 66-3-857 NMSA 1978; unattended vehicles.

A. For the purposes of Sections 66-3-852 through 66-3-857 NMSA 1978 "motor vehicle" means every bus, truck, truck tractor, road tractor and every driven vehicle in driveaway-towaway operations, required by Section 66-3-859 [66-3-849] NMSA 1978 to have emergency equipment thereon.

B. No motor vehicle shall be left unattended until the parking brake has been securely set. All reasonable precautions shall be taken to prevent the movement of any vehicle left unattended.

**History:** 1953 Comp., § 64-3-851, enacted by Laws 1978, ch. 35, § 157.

**ANNOTATIONS**

**Cross references.** — For the general definition of motor vehicle, *see* 66-1-4.11 NMSA 1978.

**Bracketed material.** — The reference in Subsection A to Section 66-3-859 NMSA 1978 appears to be incorrect, since that section defines "tank motor vehicle". The apparent intended reference is to 66-3-849 NMSA 1978, and the bracketed reference to that effect was inserted by the compiler. The bracketed material is not part of the law.

**Definition does not include passenger cars.** — Section 64-20-51, 1953 Comp. (similar to this section) defines the term "motor vehicle" and that definition does not include cars which are passenger vehicles. *Fitzgerald v. Valdez*, 1967-NMSC-088, 77 N.M. 769, 427 P.2d 655.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 275.

60A C.J.S. Motor Vehicles § 334(1).

## 66-3-852. Stopped vehicles not to interfere with other traffic.

No motor vehicle shall be stopped, parked or left standing, whether attended or unattended, upon the traveled portion of any highway outside of a business or residence district, when it is practicable to stop, park or leave such vehicle off the traveled portion of the highway. In the event that conditions make it impracticable to move such motor vehicle from the traveled portion of the highway, the driver shall make every effort to leave all possible width of the highway opposite the standing vehicle for the free passage of other vehicles and he shall take care to provide a clear view of the standing vehicle as far as possible to the front and rear.

**History:** 1941 Comp., § 68-2552, enacted by Laws 1953, ch. 139, § 158.1; 1953 Comp., § 64-20-52; recompiled as 1953 Comp., § 64-3-852, by Laws 1978, ch. 35, § 158.

**ANNOTATIONS**

**Cross references.** — For the penalty assessment for violation of this section, *see* 66-8-116 NMSA 1978.

**Signals must be placed at least 100 feet from vehicle.** — Court should instruct the jury that signals shall be placed at least 100 feet in front of and to the rear of disabled vehicles and that the distance is left to the discretion of the driver whenever the vehicle is stopped in any manner when the distance of 100 feet is not ample warning. *Zanolini v. Ferguson-Steere Motor Co.*, 1954-NMSC-012, 58 N.M. 96, 265 P.2d 983.

**Negligence per se for lack of equipment.** — Failure to equip a truck with flares, fusees and flags and to put such devices out when a truck becomes disabled on the highway is negligence per se. *Trefzer v. Stiles*, 1952-NMSC-044, 56 N.M. 296, 243 P.2d 605.

**Negligence per se to park truck on paving at night.** — Defendants, through their agent, were negligent per se by parking truck partially on paving at night without immediately putting out warning flares as required by law, ample room being available for parking safely off the pavement. *Hisaw v. Hendrix*, 1950-NMSC-015, 54 N.M. 119, 215 P.2d 598.

**Stopping truck on highway and backing up unsafely is negligence per se.** — Where driver stopped truck without displaying flares, on main portion of highway at point where it was not impracticable to have parked off the pavement, and backed truck up without observing whether it could be done with safety, the violation of statutory provisions constituted negligence per se. *Chandler v. Battenfield*, 1951-NMSC-054, 55 N.M. 361, 233 P.2d 1047.

**Reflector can be used in place of fusee or lantern.** — Section 64-20-53, 1953 Comp. (similar to Section 66-3-853 NMSA 1978) means that the placing of a red emergency reflector may be used in place of a lighted fusee and a lighted red electric lantern. *Terrel v. Lowdermilk*, 1964-NMSC-073, 74 N.M. 135, 391 P.2d 419.

**Not negligence per se if impossible to remove vehicle from pavement.** — Trial court finding that failure of the appellee to drive his vehicle completely off the highway was not negligence per se where it was impossible for appellee to pull off the highway, as there was practically no shoulder and that appellee stopped on the extreme right edge of the pavement even though the record was not clear as to the angle of the drop-off or its depth into the bar pit was supported by substantial, although conflicting, evidence, and supreme court was not justified in disturbing it. *Terrel v. Lowdermilk*, 1964-NMSC-073, 74 N.M. 135, 391 P.2d 419.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 274; 8 Am. Jur. 2d Automobiles and Highway Traffic §§ 900, 905.

60A C.J.S. Motor Vehicles §§ 330, 333.

## 66-3-853. Emergency signals; disabled vehicle.

Whenever any motor vehicle is disabled upon the traveled portion of any highway or the shoulder thereof, when lighted lamps are required, except in cities, towns and villages where there is sufficient highway lighting to make it clearly discernible to persons and vehicles on the highway at a distance of five hundred feet, the following requirements shall be observed:

A. the driver of such vehicle shall immediately place on the traveled portion of the highway at the traffic side of the disabled vehicle, a lighted fusee and a lighted red electric lantern, or a red emergency reflector;

B. except as provided in Subsections C and D of this section, as soon thereafter as possible, but in any event within the burning period of the fusee, the driver shall place three liquid-burning flares or pot torches, or three red emergency reflectors on the traveled portion of the highway in the following order:

(1) one at a distance of approximately one hundred feet from the disabled vehicle in the center of the traffic lane occupied by such vehicle and toward traffic approaching in that lane;

(2) one at a distance of approximately one hundred feet in the opposite direction from the disabled vehicle in the center of the traffic lane occupied by such vehicle; and

(3) one at the traffic side of the disabled vehicle, not less than ten feet to the front or rear thereof. If a red electric lantern or red emergency reflector has been placed on the traffic side of the vehicle in accordance with Subsection A of this section, it may be used for this purpose;

C. if disablement of any motor vehicle shall occur within five hundred feet of a curve, crest of a hill or other obstruction to view, the driver shall so place the warning signal in that direction as to afford ample warning to other users of the highway, but in no case less than one hundred feet nor more than five hundred feet from the disabled vehicle; and

D. if gasoline or any other flammable or combustible liquid or gas seeps or leaks from a fuel container of a motor vehicle disabled or otherwise stopped upon a highway, no emergency warning signal producing a flame shall be lighted or placed except at such a distance from any such liquid or gas as will assure the prevention of a fire or explosion.

**History:** 1953 Comp., § 64-3-853, enacted by Laws 1978, ch. 35, § 159.

## ANNOTATIONS

**Cross references.** — For duty to display lights on parked vehicle, *see* 66-3-825 NMSA 1978.

For duty to carry flares and other warning devices, *see* 66-3-849 NMSA 1978.

For definition of "motor vehicle" with respect to this section, *see* 66-3-851 NMSA 1978.

For the penalty assessment for violation of this section, *see* 66-8-116 NMSA 1978.

**Violation negligence per se.** — Violation of Section 64-20-53, 1953 Comp. (similar to this section), in accidents caused by failure to warn, is negligence per se. *Bailey v. Jeffries-Eaves, Inc.*, 1966-NMSC-094, 76 N.M. 278, 414 P.2d 503.

**Jury may find that standard of due care requires more** than compliance with the minimum standards of Section 64-20-53, 1953 Comp. (similar to this section). *Bailey v. Jeffries-Eaves, Inc.*, 1966-NMSC-094, 76 N.M. 278, 414 P.2d 503.

**Definition does not include passenger cars.** — Section 64-20-51, 1953 Comp. (similar to Section 66-3-851 NMSA 1978) defines the term "motor vehicle" and that definition does not include disabled cars which are passenger vehicles. *Fitzgerald v. Valdez*, 1967-NMSC-088, 77 N.M. 769, 427 P.2d 655.

**Reflector may be used instead of fusee or lantern.** — Section 64-20-53, 1953 Comp. (similar to this section) means that the placing of a red emergency reflector may be used in place of a lighted fusee and a lighted red electric lantern. *Terrel v. Lowdermilk*, 1964-NMSC-073, 74 N.M. 135, 391 P.2d 419.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 8 Am. Jur. 2d Automobiles and Highway Traffic §§ 909 to 913.

Negligence or contributory negligence of driver or occupant of motor vehicle parked or stopped on highway without flares, 67 A.L.R.2d 12.

Liability of motorist engaged about stalled or disabled vehicle on or near highway, 27 A.L.R.3d 12.

60A C.J.S. Motor Vehicles § 335.

## 66-3-854. Emergency signals; stopped or parked vehicles.

Whenever for any cause other than disablement or necessary traffic stops, any motor vehicle is stopped upon the traveled portion of any highway, or shoulder thereof, during the time lights are required, except within cities, towns and villages where there is sufficient highway lighting to make clearly discernible persons and vehicles on the highway at a distance of five hundred feet, the following requirements shall be observed:

A. the driver of such vehicle shall immediately place on the traveled portion of the highway at the traffic side of the vehicle, a lighted fusee and a lighted red electric lantern, or a red emergency reflector; and

B. if the stop is to exceed ten minutes, the driver shall place emergency signals as required and in the manner prescribed by Section 66-3-853B, C and D NMSA 1978.

**History:** 1953 Comp., § 64-3-854, enacted by Laws 1978, ch. 35, § 160.

**ANNOTATIONS**

**Cross references.** — For the definition of "motor vehicle" applicable to this section, *see* 66-3-851 NMSA 1978.

For the penalty assessment for violation of this section, *see* 66-8-116 NMSA 1978.

## 66-3-855. Emergency signals; flame producing.

No driver shall attach or permit any person to attach a lighted fusee or other flame-producing emergency signal to any part of a motor vehicle.

**History:** 1941 Comp., § 68-2555, enacted by Laws 1953, ch. 139, § 158.4; 1953 Comp., § 64-20-55; recompiled as 1953 Comp., § 64-3-855, by Laws 1978, ch. 35, § 161.

**ANNOTATIONS**

**Cross references.** — For the definition of "motor vehicle" applicable to this section, *see* 66-3-851 NMSA 1978.

For the penalty assessment for violation of this section, *see* 66-8-116 NMSA 1978.

## 66-3-856. Emergency signals; dangerous cargoes.

No driver shall use or permit the use of any flame-producing emergency signal for protecting any motor vehicle transporting explosives, any cargo tank motor vehicle used for the transportation of any flammable liquid or flammable compressed gas, whether loaded or empty; or any motor vehicle using compressed gas as a motor fuel. In lieu thereof, red electric lanterns or red emergency reflectors shall be used, the placement of which shall be in the same manner as prescribed in Section 66-3-853B and C NMSA 1978.

**History:** 1953 Comp., § 64-3-856, enacted by Laws 1978, ch. 35, § 162.

**ANNOTATIONS**

**Cross references.** — For the definition of "motor vehicle" applicable to this section, *see* 66-3-851 NMSA 1978.

For the penalty assessment for violation of this section, *see* 66-8-116 NMSA 1978.

## 66-3-857. Red flags; stopped vehicles.

During the time when lighted lamps are not required, whenever a motor vehicle is disabled, stopped or parked upon the traveled portion of any highway or shoulder thereof, except within the business or residence district of cities, towns and villages, the driver of such vehicle shall place red flags as follows:

A. one at a distance of approximately one hundred feet from the vehicle in the center of the traffic lane occupied by such vehicle toward traffic approaching in that lane; and

B. one at a distance of approximately one hundred feet in the opposite direction from the vehicle in the center of the traffic lane occupied by such vehicle.

**History:** 1953 Comp., § 64-3-857, enacted by Laws 1978, ch. 35, § 163.

**ANNOTATIONS**

**Cross references.** — For the definition of "motor vehicle" applicable to this section, *see* 66-3-851 NMSA 1978.

For the penalty assessment for violation of this section, *see* 66-8-116 NMSA 1978.

## 66-3-858 to 66-3-872. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 2003, ch. 173, § 1, effective June 20, 2003, repealed 66-3-858 through 66-3-872 NMSA 1978, as amended by Laws 1953, ch. 139, §§ 159.6 to 159.9 and 159.15 and Laws 1978, ch. 35, §§ 164 to 168 and §§ 173 to 177, relating to vehicles transporting explosives or other dangerous articles. For provisions of former sections, *see* the 2002 NMSA 1978 on *NMOneSource.com.*

## 66-3-873. Formulation of rules and regulations governing transportation of compressed gases and corrosive liquids.

A. The director is empowered and directed to formulate, adopt and promulgate rules and regulations containing reasonable standards of safety, having uniform force and effect throughout this state for the transportation of compressed gases and corrosive liquids by tank vehicle upon the public highways, including standards covering safety

and the safe operation thereof. Of the aforesaid standards, those applicable to compressed gases and those applicable to corrosive liquids shall each be separately formulated and distinguished. The director shall, and local authorities may, enforce such rules and regulations.

B. Standards of safety incorporated in any rule or regulation adopted pursuant to this section shall be consistent with recognized good practice for tank vehicle transportation of each of the aforementioned products as evidenced by standards therefor promulgated by nationally recognized authorities on the subject, except that suitable and reasonable exceptions may be provided under which the continued operation of tank vehicles in service prior to the adoption of the rules and regulations authorized by this section may be permitted.

C. No rule or regulation shall be adopted under the provisions of this section or made effective until after a public hearing thereon, of which at least twenty days' written notice shall have been given by registered mail to each motor carrier, producer, refiner, distributor or other person who or which shall have registered his or its name and mailing address with the director as a party interested in such proceedings, and at which any such interested party may appear and present testimony. Every such notice shall contain a copy of each rule and regulation proposed for adoption pursuant to such hearing.

**History:** 1953 Comp., § 64-3-873, enacted by Laws 1978, ch. 35, § 179.

**ANNOTATIONS**

**Cross references.** — For the general requirement with respect to notice by the division, *see* 66-2-11 NMSA 1978.

For adoption of flammable liquids rules by the public regulation commission, *see* 59A-52-16 NMSA 1978 et seq.

## 66-3-874. Safety belts required.

It is unlawful for any person to buy, sell, lease, trade or transfer from or to New Mexico residents at retail an automobile, which is manufactured or assembled commencing with the 1964 models, unless the vehicle is equipped with safety belts installed for use in the left front and right front seats.

**History:** 1953 Comp., § 64-20-75, enacted by Laws 1963, ch. 30, § 1; recompiled as 1953 Comp., § 64-3-874, by Laws 1978, ch. 35, § 180.

**ANNOTATIONS**

**No statutory duty to fasten seat belt under this section.** *Selgado v. Commercial Warehouse Co.*, 1975-NMCA-144, 88 N.M. 579, 544 P.2d 719; *Thomas v. Henson*,

1984-NMCA-113, 102 N.M. 417, 696 P.2d 1010, *aff'd in part and rev'd in part on other grounds*, 1985-NMSC-010, 102 N.M. 326, 695 P.2d 476.

**Pickups and trucks within meaning of "automobile".** — Pickups and trucks fall within the meaning of "motor vehicle" as used in the act's (Laws 1967, ch. 30, enacting this section and a section similar to 66-8-375 NMSA 1978) title, and within the term "automobile" as used in the body of the act. 1967 Op. Att'y Gen. No. 67-134.

**Law reviews.** — For comment, "Contributory Negligence - Failure to Use Automobile Seat Belts," see 9 Nat. Resources J. 110 (1969).

For note, "The New Case for the 'Seat Belt Defense' - *Norwest Bank New Mexico, NA v. Chrysler Corporation,*" see 30 N.M.L. Rev. 403 (2000).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Automobile occupant's failure to use seat belt as negligence, 92 A.L.R.3d 9.

Nonuse of automobile seatbelts as evidence of comparative negligence, 95 A.L.R.3d 239.

Liability under state law for injuries resulting from defective automobile seatbelt, shoulder harness, or restraint system, 48 A.L.R.5th 1.

60 C.J.S. Motor Vehicles § 26.

## 66-3-875. Safety belts; type and manner of installation.

All safety belts required in Section 66-3-874 NMSA 1978 shall be of a type and shall be installed in a manner approved by the division of motor vehicles. The division shall establish specifications and requirements for approved types of safety belts and attachments thereto. The division shall accept, as approved, all seat belt installations and the belts and anchors meeting the Society of Automotive Engineers' specifications.

**History:** 1953 Comp., § 64-3-875, enacted by Laws 1978, ch. 35, § 181.

## 66-3-876 to 66-3-886. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1995, ch. 135, § 29 repealed former 66-3-876 through 66-3-886 NMSA 1978, as enacted by Laws 1963, ch. 296, §§ 1, 4, and 6 through 11, and Laws 1978, ch. 35, §§ 183 and 186, and as amended by Laws 1978, ch. 35, §§ 182, 185, and 187 through 192, relating to the Vehicle Equipment Safety Compact, effective June 16, 1995. For provisions of former sections, *see* the 1994 NMSA 1978 on *NMOneSource.com.*

## 66-3-887. Slow-moving vehicle identification.

A. As used in this section, "slow-moving vehicle" means any vehicle which is ordinarily moved, operated or driven at a speed less than twenty-five miles an hour.

B. Each slow-moving vehicle moved, operated or driven on a highway which is open for vehicular travel shall display a slow-moving vehicle emblem or flashing amber light. The emblem is a flourescent [fluorescent] yellow-orange triangle measuring approximately sixteen and one-fourth inches horizontally and fourteen inches vertically, with truncated corners. Part of the area of the emblem shall be a reflective border, one and three-fourths inches wide. The flourescent [fluorescent] yellow-orange triangle is for daylight identification and the reflective border appears as a hollow red triangle when illuminated by headlights at night. Specifications for the emblem shall be approved by the director pursuant to Sections [Section] 66-3-838 NMSA 1978, and the director shall be guided by American Society of Automotive Engineers standards.

C. The emblem shall be mounted on the center rear of each slow-moving vehicle, broad base down, at the height of not less than two feet and not more than five feet above ground level, and in a plane parallel to the rear axle. The emblem shall be positioned so as to be entirely visible from a distance of five hundred feet or more, day or night. The emblem shall be kept clean and free from any material which might obscure its visibility.

D. Use of the emblem is confined to slow-moving vehicles, and its use on any other type of vehicle or on any stationary object is prohibited. This section does not prohibit the use on slow-moving vehicles of red flags or lawful lighting devices in addition to the slow-moving vehicle emblem.

E. No person shall sell, lease, rent or operate any slow-moving vehicle unless the slow-moving vehicle is equipped with a slow-moving vehicle emblem.

F. Any person who violates any provision of this section is guilty of a misdemeanor.

**History:** 1953 Comp., § 64-3-887, enacted by Laws 1978, ch. 35, § 193.

**ANNOTATIONS**

**Cross references.** — For the penalty for misdemeanors, *see* 66-8-7 NMSA 1978.

For the penalty assessment for violation of this section, *see* 66-8-116 NMSA 1978.

**Bracketed material.** — The bracketed material in this section was inserted by the compiler and it is not part of the law.

## 66-3-888. Airbag violations.

A. It is unlawful for a person to knowingly:

(1) fail to install an airbag in a motor vehicle after representing to another person that the person will install an airbag in the motor vehicle;

(2) install or reinstall a counterfeit or nonfunctional airbag in a motor vehicle;

(3) import, manufacture or sell or offer for sale a counterfeit or nonfunctional airbag to be installed in a motor vehicle;

(4) sell any device, install or reinstall in any vehicle any device or take any action that causes the vehicle's diagnostic system to inaccurately indicate that the vehicle is equipped with a functional airbag when a counterfeit airbag, nonfunctional airbag or no airbag is installed;

(5) represent to another that a counterfeit or nonfunctional airbag is an original equipment manufacturer part;

(6) intentionally alter an airbag in a manner that causes the airbag to become a counterfeit or nonfunctional airbag or otherwise defective;

(7) sell, lease or rent a motor vehicle that at the time of the sale, lease or rental has a counterfeit or nonfunctional airbag installed;

(8) rent or offer for hire a motor vehicle that is not equipped with airbags required to be in the motor vehicle by the applicable federal safety regulations for the make, model and year of the vehicle; or

(9) assist another in violating the provisions of this subsection with the intent that the crime be committed.

B. Whoever violates this section is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

C. A violation of the provisions of this section that results in great bodily harm or death is a fourth degree felony, and the offender shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

D. This section shall not apply to airbags, counterfeit airbags or nonfunctional airbags in a motor vehicle operated solely on a closed course or track.

E. As used in this section:

(1) "airbag" means a motor vehicle inflatable occupant restraint system or any component thereof that:

(a) operates in the event of a crash; and

(b) is designed in accordance with federal motor vehicle safety standards for the specific make, model and year of the motor vehicle in which it is or will be installed;

(2) "counterfeit airbag" means a replacement airbag or any component thereof displaying a mark identical or similar to the genuine mark of a motor vehicle manufacturer without authorization of the motor vehicle manufacturer;

(3) "great bodily harm" means an injury to a person that creates a high probability of death, that causes serious disfigurement or that results in permanent or protracted loss or impairment of the function of any member or organ of the body;

(4) "knowingly" or "known" means having actual knowledge of the violation; and

(5) "nonfunctional airbag" means a replacement airbag or any component thereof that:

(a) was previously deployed or damaged;

(b) has a fault that was detected by the vehicle diagnostic system after the installation procedure was completed; or

(c) includes any part or object, such as a repaired airbag cover, that is installed in a motor vehicle in order to mislead the owner or operator of the motor vehicle into believing that a functional airbag has been installed.

**History:** Laws 2015, ch. 43, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2015, ch. 43, § 2 made Laws 2015, ch. 43, § 1 effective July 1, 2015.

# PART 10
# UNSAFE VEHICLES

## 66-3-901. Vehicles without required equipment or in unsafe condition.

A. A person shall not drive or move on any highway any motor vehicle, trailer, semitrailer or pole trailer or any combination thereof unless the equipment upon every vehicle is in good working order and adjustment as required in the Motor Vehicle Code

and the vehicle is in such safe mechanical condition as not to endanger the driver or other occupant or any person upon the highway.

B. A person who violates the provisions of this section is guilty of a penalty assessment misdemeanor.

**History:** 1953 Comp., § 64-3-901, enacted by Laws 1978, ch. 35, § 194; 1985, ch. 46, § 1; 2018, ch. 74, § 34.

## ANNOTATIONS

**The 2018 amendment,** effective July 1, 2018, provided a penalty for a violation of this section, and made technical changes; added new subsection designation "A."; and added Subsection B.

**Presumption owner knew or should have known brakes were defective.** — That appellee knew or should have known of the defective condition of his brakes is presumed in the first instance, and the appellee has the burden of proving lack of knowledge as a reasonable man as a defense which would relieve him of the responsibility placed upon him by the statute. *Ferran v. Jacquez*, 1961-NMSC-072, 68 N.M. 367, 362 P.2d 519.

**"Good working order" construed.** — Where defendant was charged with driving while intoxicated following a traffic stop based on a defective tail lamp, and where, at trial, the law enforcement officer testified that defendant's right tail lamp was "working properly" but the large upper bulb in the left tail lamp was not illuminated, and where defendant argued that the officer did not have a reasonable suspicion to stop him because the facts and circumstances of the case did not support a conclusion that he was breaking the law or had broken the law at the time he was stopped, rendering the stop unconstitutional and the resulting evidence inadmissible, the New Mexico supreme court concluded that the "good working order" requirement set out in § 66-3-901 NMSA 1978 does not require equipment to function one hundred percent perfectly if it is suitable or functioning for its intended use, and that tail lamps do not violate § 66-3-901 when they comply with the specific statutory equipment requirements set out in §§ 66-3-801 through 66-3-888 NMSA 1978. *State v. Farish*, 2021-NMSC-030, *rev'g* 2018-NMCA-003, 410 P.3d 239.

**Law reviews.** — For article, "Transmogrification: State and Federal Regulation of Automotive Air Pollution," see 13 Nat. Resources J. 448 (1973).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 202, 779.

60 C.J.S. Motor Vehicles § 26; 60A C.J.S. Motor Vehicles § 260.

Validity of routine roadblock by state or local policy for purposes of discovery of driver's license, registration, and safety violations. 116 A.L.R.5th 479.

Authority of public official, whose duties or functions generally do not entail traffic stops, to effectuate traffic stop of vehicle. 18 A.L.R.6th 519.

# PART 11
# OFF-HIGHWAY MOTOR VEHICLES

## 66-3-1001. Short title.

Sections 66-3-1001 through 66-3-1016 [and 66-3-1017 to 66-3-1020] NMSA 1978 may be cited as the "Off-Highway Motor Vehicle Act".

**History:** 1953 Comp., § 64-3-1001, enacted by Laws 1978, ch. 35, § 197; 1985, ch. 189, § 1.

**ANNOTATIONS**

**Compiler's notes.** — Laws 2005, ch. 325, §§ 19 to 22 were enacted as new sections of the Off-Highway Motor Vehicle Act. They were compiled as 66-3-1017 to 66-3-1020 NMSA 1978 by the compiler. The bracketed material in § 66-3-1001 NMSA 1978 was added by the compiler and is not part of the law.

**Cross references.** — For restrictions on vehicle use damaging to wildlife reproduction, management or habitat, *see* 17-6-3 to 17-6-6 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Products liability: All-Terrain vehicles (ATV's), 83 A.L.R.4th 70.

## 66-3-1001.1. Definitions.

As used in the Off-Highway Motor Vehicle Act:

A. "board" means the off-highway motor vehicle advisory board;

B. "department" means the department of game and fish;

C. "division" means the motor vehicle division of the taxation and revenue department;

D. "fund" means the trail safety fund;

E. "off-highway motor vehicle" means a motor vehicle designed by the manufacturer for operation exclusively off the highway or road and includes:

(1) "all-terrain vehicle", which means a motor vehicle fifty inches or less in width, having an unladen dry weight of one thousand pounds or less, traveling on three or more low-pressure tires and having a seat designed to be straddled by the operator and handlebar-type steering control;

(2) "off-highway motorcycle", which means a motor vehicle traveling on not more than two tires and having a seat designed to be straddled by the operator and that has handlebar-type steering control;

(3) "snowmobile", which means a motor vehicle designed for travel on snow or ice and steered and supported in whole or in part by skis, belts, cleats, runners or low-pressure tires;

(4) "recreational off-highway vehicle", which means a motor vehicle designed for travel on four or more non-highway tires, for recreational use by one or more persons, and having:

(a) a steering wheel for steering control;

(b) non-straddle seating;

(c) maximum speed capability greater than thirty-five miles per hour;

(d) gross vehicle weight rating no greater than one thousand seven hundred fifty pounds;

(e) less than eighty inches in overall width, exclusive of accessories;

(f) engine displacement of less than one thousand cubic centimeters; and

(g) identification by means of a seventeen-character vehicle identification number; or

(5) by rule of the department, any other vehicles that may enter the market that fit the general profile of vehicles operated off the highway for recreational purposes;

F. "staging area" means a parking lot, trailhead or other location to or from which an off-highway motor vehicle is transported so that it may be placed into operation or removed from operation; and

G. "unpaved public roadway" means a dirt graveled street or road that is constructed, signed and maintained for regular passenger-car use by the general public.

**History:** Laws 2005, ch. 325, § 1; 2009, ch. 53, § 1.

## ANNOTATIONS

**The 2009 amendment,** effective April 1, 2009, in Subsection A, changed "safety" to "advisory"; added Subsection B; in Subsection C, added "of the taxation and revenue department"; and added Paragraphs (4) and (5) of Subsection E.

**Temporary provisions.** — Laws 2009, ch. 53, § 14, provided that on July 1, 2009, all records, personnel, appropriations, money, equipment, supplies and other property of the tourism department pursuant to administration and enforcement of the Off-Highway Motor Vehicle Act shall be transferred to the department of game and fish and all contracts pursuant to the Off-Highway Motor Vehicle Act shall be binding and effective on the department of game and fish.

## 66-3-1002. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1990, ch. 120, § 45 repealed 66-3-1002 NMSA 1978, as amended by Laws 1985, ch. 189, § 2, relating to definitions, effective July 1, 1990. For provisions of former section, *see* the 1989 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* 66-1-4.1 to 66-1-4.20 NMSA 1978.

## 66-3-1003. Off-highway motor vehicles; registration.

Unless exempted from the provisions of the Off-Highway Motor Vehicle Act, a person shall not operate an off-highway motor vehicle unless the off-highway motor vehicle has been registered in accordance with Chapter 66, Article 3 NMSA 1978. The owner shall affix the validating sticker as provided in Chapter 66, Article 3 NMSA 1978.

**History:** 1953 Comp., § 64-3-1003, enacted by Laws 1978, ch. 35, § 199; 1985, ch. 189, § 3; 1987, ch. 17, § 1; 2005, ch. 325, § 2.

**ANNOTATIONS**

**The 2005 amendment,** effective January 1, 2006, changed "motor vehicle" to "off-highway motor vehicle"; deleted the provision of former Subsection A that an off-highway motor vehicle must be registered; deleted former Subsection B, which provided for the application for registration and certificate of title for off-highway motor vehicles; deleted former Subsection C, which provided that the owner of the off-highway motor vehicle must affix the registration place; and provided that a person shall not operate an off-highway motor vehicle unless it has been registered and the owner has affixed the validating sticker in accordance with Chapter 66, Article 3 NMSA 1978.

## 66-3-1003.1. Recompiled.

**History:** Laws 2017, ch. 70, § 2; 66-3-1003.1 recompiled as 66-3-424.36 by compiler.

**ANNOTATIONS**

**Recompilations.** — Laws 2017, ch. 70, § 2 was erroneously compiled as 66-3-1003.1 NMSA 1978 and has been recompiled as 66-3-424.36 NMSA 1978 by the compiler.

## 66-3-1004. Registration certificate and nonresident permit fees; renewal; distribution of fees.

Fees shall be collected and distributed as follows:

A. the fees for registering an off-highway motor vehicle are:

(1) seventeen dollars ($17.00) for each off-highway motor vehicle, of which five dollars ($5.00) is appropriated to the division to defray the cost of making and issuing registration certificates, validating stickers and nonresident permits for off-highway motor vehicles. The remaining twelve dollars ($12.00) shall be deposited in the motor vehicle suspense fund for distribution pursuant to Section 66-6-23 NMSA 1978; and

(2) an amount determined by rule of the department not to exceed forty dollars ($40.00) for an off-highway user fee for each off-highway motor vehicle, which shall be distributed to the fund;

B. upon a change of ownership, the new owner shall make application and pay registration fees of:

(1) seventeen dollars ($17.00) in the same manner as provided by rules of the division for original registration; and

(2) an amount determined by rule of the department not to exceed forty dollars ($40.00) for an off-highway user fee for each off-highway motor vehicle, which shall be distributed to the fund;

C. except for an off-highway vehicle that is currently in compliance with another state's off-highway vehicle registration, user fee or similar law or rule demonstrated by certificate of registration, permit or similar evidence, the fees for a nonresident permit of an off-highway motor vehicle are either:

(1) seventeen dollars ($17.00), of which five dollars ($5.00) is appropriated to the division to defray the cost of making and issuing registration certificates, validating stickers and nonresident permits for off-highway motor vehicles. The remaining twelve dollars ($12.00) shall be deposited in the motor vehicle suspense fund for distribution pursuant to Section 66-6-23 NMSA 1978, and an amount determined by rule of the department not to exceed forty dollars ($40.00) for each off-highway motor vehicle, which shall be distributed to the fund; or

(2) seventeen dollars ($17.00) for a ninety-day permit, of which five dollars ($5.00) is appropriated to the division to defray the cost of making and issuing

registration certificates, validating stickers and nonresident permits for off-highway motor vehicles. The remaining twelve dollars ($12.00) shall be deposited in the motor vehicle suspense fund for distribution pursuant to Section 66-6-23 NMSA 1978;

D. except as provided in Paragraph (2) of Subsection C of this section, each nonresident permit shall be:

(1) good for two years after the month in which the off-highway motor vehicle nonresident permit is issued; and

(2) renewed every two years;

E. the off-highway user fee for each off-highway motor vehicle shall be paid upon obtaining and renewing each registration certificate or nonresident permit;

F. duplicate registration certificates and nonresident permits shall be issued upon payment of a seven-dollar-fifty-cent ($7.50) fee, which is appropriated to the division to defray the cost of making and issuing duplicate registration certificates and nonresident permits for off-highway motor vehicles;

G. a fee of one dollar ($1.00) on registration certificates and nonresident permits shall be collected for the litter control and beautification fund; and

H. the department, in conjunction with other agencies and departments, may establish and maintain sites to collect fees and issue permits for residents and nonresidents.

**History:** 1953 Comp., § 64-3-1004, enacted by Laws 1978, ch. 35, § 200; 1985, ch. 189, § 4; 1987, ch. 17, § 2; 2005, ch. 325, § 3; 2007, ch. 319, § 36; 2009, ch. 53, § 2.

## ANNOTATIONS

**Cross references.** — For payment in foreign currency under the Motor Vehicle Code, *see* 66-6-36 NMSA 1978.

For the litter control and beautification fund, *see* 67-16-14 NMSA 1978.

**The 2009 amendment,** effective April 1, 2009, in Paragraph (1) of Subsection A, added language that appropriates $5.00 of the fee to the division and the second sentence; in Paragraph (2) of Subsection A, changed the amount from $30 to $40 and added "which shall be distributed to the fund"; in Paragraph (2) of Subsection B, changed the amount from $30 to $40 and added "which shall be distributed to the fund"; deleted former Subsection C that provided for fees for a nonresident permit; deleted former Subsection D that provided for licensure for two years; added new Subsections C and D; in Subsection F, added the language that provided for the appropriation of a $7.50 fee to the division; and in Subsection H, deleted references to the tourism department, the

division and the department of game and fish and added "other agencies and departments".

**The 2007 amendment,** effective June 15, 2007, changed "New Mexico clean and beautiful program" to "litter control and beautification fund".

**The 2005 amendment,** effective January 1, 2006, increased the registration fee from $15 to $17 in Subsection A(1); deleted the former provision of Subsection A the a registration is valid for two years after the motor vehicle is registered and that each registration must be renewed every three years; added Subsection A(2) to provide that the fees include an amount determined by rule of the tourism department not to exceed $30 for a user fee for each vehicle; increased the registration fee from $15 to $17 in Subsection B(1); added Subsection B(2) to provide that the fees include an amount determined by rule of the tourism department not to exceed $30 for a user fee for each vehicle; added Subsection C(1) through (3) to provide for nonresident permit fees; added Subsection D(1) and (2) to provide that registration certificates are valid for two years and nonresident permits must be renewed every two years; added Subsection E to provide that the fees shall be paid upon obtaining and renewing each registration certificate and nonresident permit; increase the fee for duplicate registration certificates and nonresident permits from $1.00 to $7.50 in Subsection F; added Subsection G to provide a $1.00 fee for registration certificates and nonresident permits for the New Mexico clean and beautiful program; and added Subsection H to provide that the tourism department, in conjunction with the department of game and fish, may establish sites to collect fees and issue permits.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 8, 63, 64.

60 C.J.S. Motor Vehicles §§ 6, 136.

## 66-3-1004.1. Repealed.

**History:** Laws 2005, ch. 325, § 4; 2007, ch. 319, § 37; repealed by Laws 2009, ch. 53, § 15.

**ANNOTATIONS**

**Repeals.** — Laws 2009, ch. 53, § 15 repealed 66-3-1004.01 NMSA 1978, as enacted by Laws 2005, ch. 325, § 4, relating to fees, effective April 1, 2009. For provisions of former section, *see* the 2008 NMSA 1978 on *NMOneSource.com.*

## 66-3-1005. Exemptions.

The provisions of the Off-Highway Motor Vehicle Act shall not apply to persons who operate off-highway motor vehicles on privately held lands or to off-highway motor vehicles that are:

A. owned and operated by an agency or department of the United States, this state or a political subdivision of this state;

B. operated exclusively on lands privately held; provided that the appropriate tax or fee has been paid in lieu of the motor vehicle registration fees;

C. owned by nonresidents and used in this state only for organized and endorsed competition purposes; provided that the use is not on a rental basis;

D. brought into this state by manufacturers or distributors for wholesale purposes and not used for demonstrations;

E. in the possession of dealers as stock-in-trade and not used for demonstration purposes;

F. farm tractors, as defined in Section 66-1-4.6 NMSA 1978, special mobile equipment, as defined in Section 66-1-4.16 NMSA 1978, or off-highway motor vehicles being used for agricultural operations; or

G. used exclusively on private closed courses, whether owned by the rider or another person; provided that, if applicable, the excise tax and registration fees have been paid and are current.

**History:** 1953 Comp., § 64-3-1005, enacted by Laws 1978, ch. 35, § 201; 1985, ch. 189, § 5; 2005, ch. 325, § 5.

**ANNOTATIONS**

**The 2005 amendment,** effective January 1, 2006, provided an exemption for a person who operates off-highway motor vehicles on privately held lands; deleted the former exemption if the off-highway motor vehicle was operated on lands privately held by the owner of the vehicle; provided an exemption in Subsection B for an off-highway motor vehicle that is operated on lands privately held provided that the appropriate tax or fee has been paid in lieu of the motor vehicle registration fees; deleted former exemption in Subsection C if the off-highway motor vehicle was owned by a nonresident provided the use was for competition and did not exceed fifteen days and was not a rental vehicle; added Subsection C to provide an exemption if the off-highway motor vehicle is owned by a nonresident and used only for organized and endorsed competition and is not a rental; provided an exemption in Subsection F for off-highway motor vehicles used for agricultural operations; and added Subsection G to provide an exemption if the off-highway motor vehicle is used in private closed courses provided the applicable tax and fees have been paid.

## 66-3-1006. Grounds for refusing registration or certificate of title.

The division may refuse registration or issuance of a certificate of title or any transfer of a registration certificate if:

A. the division has reasonable grounds to believe that the application contains any false or fraudulent statement or that the applicant has failed to furnish the required information or reasonable additional information requested by the division or that the applicant is not entitled to the issuance of a certificate of title or registration certificate of the off-highway motor vehicle under the Motor Vehicle Code [66-1-1 NMSA 1978] or laws of this state;

B. the division has reasonable grounds to believe that the off-highway motor vehicle is stolen or embezzled or that the granting of a registration certificate or the issuance of a certificate of title would constitute a fraud against the rightful owner or other person having a valid lien upon the off-highway motor vehicle;

C. the division has reasonable grounds to believe that a nonresident applicant is not entitled to registration issuance under the laws of the nonresident applicant's state of residence;

D. the required fees have not been paid; or

E. the motor vehicle excise tax has not been paid pursuant to Chapter 7, Article 14 NMSA 1978.

**History:** 1953 Comp., § 64-3-1006, enacted by Laws 1978, ch. 35, § 202; 1985, ch. 189, § 6; 2005, ch. 325, § 6.

**ANNOTATIONS**

**Cross references.** — For fraudulent applications, *see* 66-8-1 NMSA 1978.

**The 2005 amendment,** effective January 1, 2006, provided in Subsection A that the division may refuse registration or a certificate of title or registration if the division has reasonable grounds to believe the application contains false or fraudulent statements or the applicant has failed to provide all information or the applicant is not entitled to issuance of a certificate of title or registration of the off-highway motor vehicle under the Motor Vehicle Code; added Subsection C to provide that the division may refuse registration or a certificate of title or registration if the division has reasonable grounds to believe a nonresident applicant is not entitle to registration under the laws of the nonresident's state of residence; and provided in Subsection E that the division may refuse registration or a certificate of title or registration if the tax has not been paid pursuant to Chapter 7, Article 14, NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 60 C.J.S. Motor Vehicles § 100.

## 66-3-1007. Evidentiary value of certificate of title.

A certificate of title issued by the division for an off-highway motor vehicle shall be received as prima facie evidence of the ownership of the off-highway motor vehicle named in the certificate and as prima facie evidence of all liens and encumbrances against the off-highway motor vehicle appearing on the certificate.

**History:** 1953 Comp., § 64-3-1007, enacted by Laws 1978, ch. 35, § 203; 1985, ch. 189, § 7; 2005, ch. 325, § 7.

**ANNOTATIONS**

**The 2005 amendment,** effective January 1, 2006, changed "motor vehicle" to "off-highway motor vehicle".

## 66-3-1008. Validating stickers to be furnished by division.

The division, upon registering an off-highway motor vehicle, shall issue to the owner validating stickers as provided in Section 66-3-14 NMSA 1978.

**History:** 1953 Comp., § 64-3-1008, enacted by Laws 1978, ch. 35, § 204; 1985, ch. 189, § 8; 2005, ch. 325, § 8.

**ANNOTATIONS**

**The 2005 amendment,** effective January 1, 2006, provided that upon registration of off-highway motor vehicles, the division shall issue validating stickers.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 54.

60 C.J.S. Motor Vehicles § 106.

## 66-3-1009. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1991, ch. 160, § 22 repealed 66-3-1009 NMSA 1978, as enacted by Laws 1978, ch. 35, § 205, relating to dealer demonstration certificates, effective July 1, 1991. For provisions of former section, *see* the 1990 NMSA 1978 on *NMOneSource.com.*

## 66-3-1010. Licensing.

Drivers of off-highway motor vehicles are not required to be licensed.

**History:** 1953 Comp., § 64-3-1010, enacted by Laws 1978, ch. 35, § 206; 1985, ch. 189, § 10.

## 66-3-1010.1. Off-highway motor vehicle safety training organization; approval and certification.

A. An off-highway motor vehicle safety training organization that offers and conducts an off-highway motor vehicle safety training course shall be approved and certified by the department. Applicants for approval and certification shall submit an application to the department for consideration.

B. The department may approve and certify an organization that meets the minimum criteria established by the department for an off-highway motor vehicle safety training organization. Each approval and certification shall be renewed annually.

**History:** Laws 2005, ch. 325, § 9; 2009, ch. 53, § 3.

**ANNOTATIONS**

**The 2009 amendment,** effective April 1, 2009, changed "board" to "department".

## 66-3-1010.2. Off-highway motor vehicle safety permit; requirements; issuance.

A person under the age of eighteen shall be required to successfully complete an off-highway motor vehicle safety training course for which the person shall have parental permission. The course shall be conducted by an off-highway motor vehicle safety training organization that is approved and certified by the department. Upon successful completion of the course, the person shall receive an off-highway motor vehicle safety permit issued by the organization.

**History:** Laws 2005, ch. 325, § 10; 2009, ch. 53, § 4.

**ANNOTATIONS**

**The 2009 amendment,** effective April 1, 2009, changed "board" to "department".

## 66-3-1010.3. Operation and equipment; safety requirements.

A. A person shall not operate an off-highway motor vehicle:

(1) in a careless, reckless or negligent manner so as to endanger the person or property of another;

(2) while under the influence of intoxicating liquor or drugs as provided by Section 66-8-102 NMSA 1978;

(3) while in pursuit of and with intent to hunt or take a species of animal or bird protected by law unless otherwise authorized by the state game commission;

(4) in pursuit of or harassment of livestock in any manner that negatively affects the livestock's condition;

(5) on or within an earthen tank or other structure meant to water livestock or wildlife, unless the off-highway motor vehicle is on a route designated by the landowner or land management agency as an off-highway motor vehicle route;

(6) in a manner that has a direct negative effect on or interferes with persons engaged in agricultural practices;

(7) in excess of ten miles per hour within two hundred feet of a business, animal shelter, horseback rider, bicyclist, pedestrian, livestock or occupied dwelling, unless the person operates the vehicle on a closed course or track or a public roadway;

(8) unless in possession of the person's registration certificate or nonresident permit;

(9) unless the vehicle is equipped with a spark arrester approved by the United States forest service; provided that a snowmobile is exempt from this provision;

(10) when conditions such as darkness limit visibility to five hundred feet or less, unless the vehicle is equipped with:

(a) one or more headlights of sufficient candlepower to light objects at a distance of one hundred fifty feet; and

(b) at least one taillight of sufficient intensity to exhibit a red or amber light at a distance of two hundred feet under normal atmospheric conditions;

(11) that produces noise that exceeds ninety-six decibels when measured using test procedures established by the society of automotive engineers pursuant to standard J-1287; or

(12) where off-highway motor vehicle traffic is prohibited under local, state or federal rules or regulations.

B. A person under the age of eighteen shall not operate an off-highway motor vehicle:

(1) or ride upon an off-highway motor vehicle without wearing eye protection and a safety helmet that is securely fastened in a normal manner as headgear and that meets the standards established by the department;

(2) without an off-highway motor vehicle safety permit; or

(3) while carrying a passenger.

C. A person under the age of eighteen but at least ten years of age shall not operate an off-highway motor vehicle unless the person is visually supervised at all times by a parent, legal guardian or a person over the age of eighteen who has a valid driver's license. This subsection shall not apply to a person who is at least:

(1) thirteen years of age and has a valid motorcycle license and off-highway motor vehicle safety permit; or

(2) fifteen years of age and has a valid driver's license, instructional permit or provisional license and off-highway motor vehicle safety permit.

D. A person under the age of ten shall not operate an off-highway motor vehicle unless:

(1) the all-terrain vehicle or recreational off-highway vehicle is an age-appropriate size-fit vehicle established by rule of the department; and

(2) the person is visually supervised at all times by a parent, legal guardian or instructor of a safety training course certified by the department.

E. An off-highway motor vehicle shall not be sold or offered for sale if the vehicle produces noise that exceeds ninety-six decibels when measured using test procedures established by the society of automotive engineers pursuant to standard J-1287. This subsection shall not apply to an off-highway motor vehicle that is sold or offered for sale only for organized competition.

**History:** Laws 2005, ch. 325, § 11; 2009, ch. 53, § 5; 2017, ch. 70, § 3.

## ANNOTATIONS

**The 2017 amendment,** effective July 1, 2017, exempted the operation of an off-highway vehicle when operated on a public roadway from the prohibition of operating off- highway motor vehicles in excess of ten miles per hour within two hundred feet of a business, animal shelter, horseback rider, bicyclist, pedestrian, livestock or occupied dwelling; and in Subsection A, Paragraph A(7), after "course or track", added "or a public roadway".

**The 2009 amendment,** effective April 1, 2009, added Paragraphs (4), (5) and (6) of Subsection A; added "livestock" in Paragraph (7) of Subparagraph A; added Paragraph (12) of Subsection A; in Subsection B, changed "board" to "department"; in Subsection D, changed "board" to "department"; in Paragraph (1) of Subsection D, added "or

recreational off-highway vehicle"; and deleted former Subsection E that provided that Subsections C and D did not apply to persons who are part of an organized tour.

## 66-3-1010.4. Safety helmet; civil liability.

Failure by a passenger or driver to use a safety helmet while on an off-highway motor vehicle shall not in any instance constitute fault or negligence and shall not limit or apportion damages.

**History:** Laws 2005, ch. 325, § 12.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 325, § 26 made this section effective January 1, 2006.

## 66-3-1010.5. Requirements of dealers to distribute safety information.

A dealer selling off-highway motor vehicles shall distribute information provided by the department to off-highway motor vehicle purchasers on state laws, environmental and cultural considerations, customs, safety requirements, training programs, operating characteristics and potential risk of injury associated with off-highway motor vehicles.

**History:** Laws 2005, ch. 325, § 13; 2009, ch. 53, § 6.

**ANNOTATIONS**

**The 2009 amendment,** effective April 1, 2009, deleted "recommended by the board" and added "provided by the department", and added "environmental and cultural considerations, customs".

## 66-3-1011. Operation on streets or highways; prohibited areas.

A. A person shall not operate an off-highway motor vehicle on any:

(1) limited access highway or freeway at any time; or

(2) paved street or highway except as provided in Subsection B, C, D or E of this section.

B. Off-highway motor vehicles may cross streets or highways, except limited access highways or freeways, if the crossings are made after coming to a complete stop prior to entering the roadway. Off-highway motor vehicles shall yield the right of way to

oncoming traffic and shall begin a crossing only when it can be executed safely and then cross in the most direct manner as close to a perpendicular angle as possible.

C. If authorized by ordinance or resolution of a local authority or the state transportation commission, a recreational off-highway vehicle or an all-terrain vehicle may be operated on a paved street or highway owned and controlled by the authorizing entity if:

(1) the vehicle has one or more headlights and one or more taillights that comply with the Off-Highway Motor Vehicle Act;

(2) the vehicle has brakes, mirrors and mufflers;

(3) the operator has valid driver's licenses or permits as required under the Motor Vehicle Code and off-highway motor vehicle safety permits as required under the Off-Highway Motor Vehicle Act;

(4) the operator is insured in compliance with the provisions of the Mandatory Financial Responsibility Act [66-5-201 to 66-5-239 NMSA 1978];

(5) the operator of the vehicle is using eye protection that complies with the Off-Highway Motor Vehicle Act; and

(6) if the operator is under eighteen years of age, the operator is wearing a safety helmet that complies with the Off-Highway Motor Vehicle Act.

D. Except for sections of the Motor Vehicle Code that are in conflict with the licensing and equipment requirements of the Off-Highway Motor Vehicle Act, any operator using an off-highway motor vehicle on a paved street or highway shall be subject to the requirements and penalties for operators of moving and parked vehicles under the Motor Vehicle Code.

E. By ordinance or resolution, a local authority or state transportation commission may establish separate speed limits and operating restrictions for off-highway vehicles where they are authorized to operate on paved streets or highways pursuant to Subsection C of this section.

F. A person shall not operate an off-highway motor vehicle on state game commission-owned, -controlled or -administered land except as specifically allowed pursuant to Chapter 17, Article 6 NMSA 1978.

G. A person shall not operate an off-highway motor vehicle on land owned, controlled or administered by the state parks division of the energy, minerals and natural resources department, pursuant to Chapter 16, Article 2 NMSA 1978, except in areas designated by and permitted by rules adopted by the secretary of energy, minerals and natural resources.

H. Unless authorized, a person shall not:

(1) remove, deface or destroy any official sign installed by a state, federal, local or private land management agency; or

(2) install any off-highway motor vehicle-related sign.

**History:** 1953 Comp., § 64-42-11, enacted by Laws 1975, ch. 240, § 11; recompiled as 1953 Comp., § 64-3-1011, by Laws 1978, ch. 35, § 207; 1985, ch. 189, § 11; 2005, ch. 325, § 14; 2009, ch. 53, § 7; 2016, ch. 91, § 1; 2017, ch. 70, § 4.

## ANNOTATIONS

**Cross references.** — For controlled access highways generally, *see* 67-11-1 NMSA 1978 et seq.

**The 2017 amendment,** effective July 1, 2017, removed the requirement that a helmet be used by adults driving or riding off-highway vehicles on paved roads, limited the requirement to operators under eighteen years of age, and provided that any operator using an off-highway motor vehicle on a paved street or highway shall be subject to the requirements and penalties of the Motor Vehicle Code; in Subsection A, Paragraph A(2), after "B, C", deleted "or", and after "D", added "or E"; in Subsection C, Paragraph C(3), after "operator has", deleted "a", after "valid driver's", deleted "license, instruction permit or provisional license and an off-highway motor vehicle safety permit" and added "licenses or permits as required under the Motor Vehicle Code and off-highway motor vehicle safety permits as required under the Off-Highway Motor Vehicle Act", in Paragraph C(5), after "vehicle is", deleted "wearing" and added "using", and after "protection", deleted "and" and added "that complies with the Off-Highway Motor Vehicle Act; and", added paragraph designation "(6)", and in Paragraph C(6), added "if the operator is under eighteen years of age, the operator is wearing", and after "that", deleted "comply" and added "complies"; and added a new Subsection D and redesignated the succeeding subsections accordingly.

**The 2016 amendment,** effective May 18, 2016, allowed recreational off-highway and all-terrain vehicles to be driven on streets, roads and highways if authorized by local ordinance or resolution, and allowed local authorities or the state transportation commission to establish separate speed limits and operating restrictions for off-highway vehicles; in Subsection A, Paragraph (2), deleted "any", and after "Subsection B", added "C or D"; and added new Subsections C and D, and redesignated the succeeding subsections accordingly.

**The 2009 amendment,** effective April 1, 2009, added Subsection E.

**The 2005 amendment,** effective January 1, 2006, added Subsection A(2) to provide that a person shall not operate an off-highway motor vehicle on a paves street or highway except as provided in Subsection B; provided in Subsection B that an off-

highway motor vehicle may not cross a limited access highway or freeway; added Subsection C to provide that a person shall not operate an off-highway motor vehicle on state game commission land except as allowed in Chapter 17, Article 6 NMSA 1978; and added Subsection D to provide that a person shall not operate an off-highway motor vehicle on state park land except on designated and permitted areas.

## 66-3-1012. Driving of off-highway motor vehicles adjacent to highway.

A. Off-highway motor vehicles issued a validating sticker or nonresident permit may be driven adjacent to a highway, yielding to all vehicles entering or exiting the highway, in a manner so as not to interfere with traffic upon the highway, only for the purpose of gaining access to or returning from areas designed for the operation of off-highway motor vehicles by the shortest possible route and when no other route is available or when the area adjacent to a highway is being used as a staging area. Such use must occur between the highway and fencing that separates the highway from private or public lands.

B. When snow conditions permit, an off-highway motor vehicle may be operated on the right-hand side of a highway, parallel, but not closer than ten feet, to the inside of the plow bank.

**History:** 1953 Comp., § 64-3-1012, enacted by Laws 1978, ch. 35, § 208; 1985, ch. 189, § 12; 2005, ch. 325, § 15.

**ANNOTATIONS**

**The 2005 amendment,** effective January 1, 2006, deleted the former provision that an off-highway motor vehicle issued a registration plate could be moved by non mechanical means adjacent to a highway; provided in Subsection A that an off-highway motor vehicle issued a validating sticker or nonresident permit may be driven adjacent to a highway, yielding to all vehicles entering or exiting the highway, only for the purpose of gaining access to designated off-highway motor vehicle areas by the shortest possible route when no other route is available or when the area adjacent to a highway is used as a staging area and that the use must occur between the highway and fencing that separates the highway from private or public lands; and added Subsection B to provide that when snow conditions permit an off-highway motor vehicle may be operated on the right-hand side of the highway, not closer than ten feet to the inside of the plow bank.

## 66-3-1013. Liability; local registration prohibited.

A. A landowner shall not be held liable for damages arising out of off-highway motor vehicle-related accidents or injuries occurring on the landowner's lands in which the landowner is not directly involved unless the entry on the lands is subject to payment of a fee.

B. It is unlawful to operate an off-highway motor vehicle on private lands or roads except with the express permission of the landowner or leaseholder of the lands.

**History:** 1953 Comp., § 64-42-13, enacted by Laws 1975, ch. 240, § 13; recompiled as 1953 Comp., § 64-3-1013, by Laws 1978, ch. 35, § 209; 1985, ch. 189, § 13; 2005, ch. 325, § 16.

**ANNOTATIONS**

**Compiler's notes.** — As enacted, this section contained a section heading which read "Liability; local registration prohibited".

**The 2005 amendment,** effective January 1, 2006, provided in Subsection B that it is unlawful to operate an off-highway vehicle on private roads without the permission of the landowner or leaseholder of the land.

**Equal Protection Clause considerations.** — The operation of off-highway motorcycles is a potentially dangerous activity and the singling out of these vehicles in Section 66-3-1013 NMSA 1978 is not precluded by the Equal Protection Clause. *Vandolsen v. Constructors, Inc.*, 1984-NMCA-023, 101 N.M. 109, 678 P.2d 1184, cert. denied, 101 N.M. 77, 678 P.2d 705.

**This section does not confer recreational usage immunity on government landowners.** *Martin v. Middle Rio Grande Conservancy Dist.*, 2008-NMCA-151, 145 N.M. 151, 194 P.3d 766.

**Exception for willful or malicious conduct.** — The words "directly involved" in this provision refer to "willful" or "malicious" conduct by landowners proximately causing injury to individuals who have entered upon their property. Summary judgment against plaintiff was therefore proper when there were no facts indicating that defendants' actions causing plaintiff's injury were "willful" or "malicious" in nature. *Matthews v. State*, 1991-NMCA-116, 113 N.M. 291, 825 P.2d 224.

**Utter disregard for consequences.** — If a landowner performs intentional acts "in utter disregard for the consequences," the landowner is not entitled to immunity. When a defendant claims immunity, plaintiffs are therefore not required to prove deliberate intention or purpose to harm in order to rebut the claim. *Rivero v. Lovington Country Club, Inc.*, 1997-NMCA-114, 124 N.M. 273, 949 P.2d 287.

## 66-3-1014. Accidents and accident reports.

The driver of an off-highway motor vehicle involved in an accident resulting in injuries to or the death of a person or resulting in damage to public or private property to the extent of five hundred dollars ($500) or more shall immediately notify a law enforcement agency of the accident and the facts relating to the accident. If the driver is

under the age of eighteen, the driver's parent or legal guardian shall immediately notify a law enforcement agency of the accident and the facts relating to the accident.

**History:** 1953 Comp., § 64-42-14, enacted by Laws 1975, ch. 240, § 14; recompiled as 1953 Comp., § 64-3-1014, by Laws 1978, ch. 35, § 210; 1985, ch. 189, § 14; 2005, ch. 325, § 17.

**ANNOTATIONS**

**The 2005 amendment,** effective January 1, 2006, increased the minimum amount of property damage that requires an accident report from $50 to $500 or more; provided that if the driver is under the age of eighteen, the driver's parent or legal guardian shall immediately notify a law enforcement agency of the accident and the facts relating to the accident.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Products liability: All-Terrain vehicles (ATV's), 83 A.L.R.4th 70.

## 66-3-1015. Enforcement.

A wildlife conservation officer, state police officer or peace officer of this state or any of its political subdivisions, upon displaying the officer's badge of office, has the authority to enforce the provisions of the Off-Highway Motor Vehicle Act and may:

A. require an off-highway motor vehicle operator to produce:

(1) the registration certificate or nonresident permit;

(2) proof of successful completion of an off-highway motor vehicle training course conducted by an off-highway safety training organization approved and certified by the department, when required by Section 66-3-1010.2 NMSA 1978; and

(3) the personal identification of the operator; and

B. issue citations for violations of the provisions of the Off-Highway Motor Vehicle Act.

**History:** 1953 Comp., § 64-3-1015, enacted by Laws 1978, ch. 35, § 211; 1985, ch. 189, § 15; 2005, ch. 325, § 18; 2009, ch. 53, § 8.

**ANNOTATIONS**

**Cross references.** — For the powers of the wildlife conservation officers, *see* 17-2-46 NMSA 1978.

**The 2009 amendment,** effective April 1, 2009, in Paragraph (2) of Subsection A, changed "board" to "department".

**The 2005 amendment,** effective January 1, 2006, provided in Subsection A(2) that an officer may require an operator to produce the nonresident permit and added Subsection A(2) to provide that an officer may require the operator to produce proof of completion of an off-highway motor vehicle training course.

## 66-3-1016. Repealed.

**History:** 1953 Comp., § 64-3-1016, enacted by Laws 1978, ch. 35, § 212; 1985, ch. 189, § 16; repealed by Laws 2009, ch. 53, § 15.

**ANNOTATIONS**

**Repeals.** — Laws 2009, ch. 53, § 15 repealed 66-3-1016 NMSA 1978, as enacted by Laws 1978, ch. 35, § 212, relating to penalties, effective April 1, 2009. For provisions of former section, *see* the 2008 NMSA 1978 on *NMOneSource.com.*

## 66-3-1017. Off-highway motor vehicle advisory board created; members; compensation.

A. The "off-highway motor vehicle advisory board" is created to advise the department on matters related to administration of the Off-Highway Motor Vehicle Act. The board shall consist of the following seven members appointed by the governor:

(1) one landowner living near a national forest or bureau of land management property that is used extensively for recreational off-highway vehicle activity;

(2) one producer or one grazing permittee on public lands from the farming or livestock industry;

(3) one person from the off-highway motor vehicle industry;

(4) one off-highway motor vehicle user;

(5) one hunter or angler;

(6) one quiet recreationalist, such as a hiker, backpacker, birdwatcher, equestrian, mountain biker, rock climber or archaeological enthusiast; and

(7) one member with expertise in injury prevention or treatment.

B. The board shall select a chair and a vice chair.

C. The board shall meet at the call of the chair but not less than twice annually.

D. Members shall be appointed to staggered terms of two years each; provided that no more than four terms expire in any one year. The board members shall select by lot four members to serve initial terms of three years each. A vacancy shall be filled by appointment of the governor for the remainder of the unexpired term. Members of the board shall be entitled to reimbursement pursuant to the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

**History:** Laws 2005, ch. 325, § 19; 2009, ch. 53, § 9.

**ANNOTATIONS**

**Compiler's notes.** — Laws 2005, ch. 325, § 19 enacted this section as a new section of the Off-Highway Motor Vehicle Act, § 66-3-1001 NMSA 1978.

**The 2009 amendment,** effective April 1, 2009, deleted former Subsection A that created the off-highway motor vehicle safety board; deleted former Subsection B, which provided for the organization of the off-highway motor vehicle safety board; deleted former Subsection C, which provided for calling meetings, a quorum and majority vote of a quorum for approval of board action; deleted former Subsection D, which provided for staggered terms of board members; deleted former Subsection E, which provided for reimbursement of appointed members for attending meetings; and added Subsections, A, B, C and D.

## 66-3-1018. Department; powers and duties.

A. The department shall cooperate with appropriate federal agencies, public and private organizations and corporations and local government units to implement the provisions of the Off-Highway Motor Vehicle Act.

B. The department:

(1) shall accept and evaluate all applications for approval and certification of an off-highway motor vehicle safety training organization and approve and certify those that meet the minimum criteria;

(2) shall notify the division of the off-highway motor vehicle safety training organizations that have received approval and certification;

(3) shall establish and revise as appropriate minimum criteria to approve and certify an off-highway motor vehicle safety training organization. The criteria shall include requirements for curriculum and materials for:

(a) training instructors to teach off-highway motor vehicle safety;

(b) training the public about off-highway motor vehicle safety and age-appropriate size-fit use of off-highway motor vehicles; and

(c) teaching responsible use of off-highway motor vehicles with respect to environmental considerations, private property restrictions, agricultural and rural lifestyles and cultural considerations, off-highway motor vehicle operating laws and prohibitions against operating off-highway motor vehicles under the influence of alcohol or drugs;

(4) shall implement a state off-highway motor vehicle safety training and certification program;

(5) shall adopt and promulgate rules regarding the:

(a) age-appropriate size-fit use of all-terrain vehicles or recreational off-highway motor vehicles;

(b) acceptance or accreditation of instruction or safety courses provided by other states; and

(c) standards covering the specifications of eye protection and safety helmets;

(6) may recommend, with public participation and input, off-highway motor vehicle park, facility and trail locations to the state, county, tribal or local governing body or private entity that owns or administers the land upon which the park, facility or trail is located. The department shall establish criteria to recommend locations that include consideration of off-highway motor vehicle operating laws and effects on:

(a) wildlife and the environment;

(b) adjacent state, county, federal, tribal and private property;

(c) other recreational and nonrecreational uses on the same or adjacent lands; and

(d) archaeological, cultural and historic resources and customs;

(7) shall recommend restoration or, if deemed necessary, closure of off-highway motor vehicle tracks or trails to the state, county, tribal or local governing body or private entity that owns or administers the land upon which the tracks or trails are located if they pose significant or irreversible environmental damage, a danger to users or a public nuisance as determined by the department. The department shall consider the construction of alternative tracks or trails as part of the closure process;

(8) shall accept and evaluate all applications for grants from the fund for implementation of the provisions of the Off-Highway Motor Vehicle Act. The department shall establish criteria for grants from the fund that include consideration of the:

(a) applicant's financial and legal status;

(b) applicant's management plan, including specific measures to avoid or minimize environmental damage to public and private lands and danger to users and spectators;

(c) operating budget for the park, trail, facility or staging area;

(d) availability of matching funds; and

(e) public participation and input;

(9) shall certify tour guides;

(10) shall prepare a management plan that accomplishes the purposes of the Off-Highway Motor Vehicle Act in a cost-effective manner and relies on existing agencies' available funding with specific qualifications for program implementation, which shall include joint powers agreements with the department of public safety and other law enforcement agencies for law enforcement and other agencies as appropriate for carrying out the provisions of the Off-Highway Motor Vehicle Act;

(11) shall develop and implement an overall enforcement strategy for the entire state that includes:

(a) cooperation with federal, state and local law enforcement agencies to provide training and educational materials related to off-highway motor vehicle use;

(b) coordination efforts related to off-highway motor vehicle use with participating law enforcement agencies;

(c) developing strategies for addressing and mininizing impacts on farmers and ranchers in rural agricultural areas, on hunters and anglers and on non-motorized recreationalists by off-highway motor vehicle use; and

(d) using law enforcement DUI-type "blitzes" in heavily used areas, staging areas or other problem areas;

(12) shall develop and implement an overall educational strategy for the entire state that:

(a) incorporates materials developed by the United States department of agriculture forest service program that teaches trail etiquette and respect for natural resources;

(b) includes the development of New Mexico-specific written, video or other educational materials and educational programs that address the impact of off-highway motor vehicles on traditional living culture, agricultural land and private property; and

(c) includes the development and maintenance of a web site containing rules and regulations, safety information and educational material relating to resource protection and the impact of off-highway motor vehicles on traditional living culture, agricultural land and historical sites;

(13) shall develop an overall strategy for phased implementation of an information system to track information, such as use patterns, injury data, ecological data, natural resource data and data relating to the impact of off-highway motor vehicles on traditional living culture and on agricultural land. The strategy shall include:

(a) identification and implementation of appropriate data collecting mechanisms, such as a toll-free number or a web-based data collecting process; and

(b) development of an information system program capable of interfacing with existing government and private databases or other information systems;

(14) may implement noise enforcement by the testing of sound levels of off-highway motor vehicles at the time of registration and equip law enforcement officers with sound meters for field testing of sound levels;

(15) may contract with government or quasi-government agencies to conduct analysis of the impact of off-highway motor vehicle use on forests, rangeland and other natural resources and use the data obtained to make recommendations to the appropriate land management agency;

(16) shall review the definition of "off-highway motor vehicle" as needed to include new classes of off-highway motor vehicles as they become available in the marketplace;

(17) shall, in cooperation with the division, determine the size, composition, attachment mechanism, letter or number height and other properties of off-highway motor vehicle identification. This identification may be a traditional license plate, stick-on lettering as used for boat identification or another form of identification that is visible and readable;

(18) shall present its semiannual plans and progress to the advisory board for the board's input and response; and

(19) may collaborate with the appropriate land agencies to develop criteria for signage relating to off-road motor vehicle use, including the size, visibility, graphics and frequency of signage.

**History:** Laws 2005, ch. 325, § 20; 2009, ch. 53, § 10.

**ANNOTATIONS**

**The 2009 amendment,** effective April 1, 2009, changed "board" to "department"; in Subparagraph (c) of Paragraph (3) of Subsection B, added "agricultural and rural lifestyles and cultural considerations"; in Paragraph (4) of Subsection B, deleted "by January 1, 2007"; in Subparagraph (a) of Paragraph (5) of Subsection B, added "all-terrain vehicles or recreational"; in Subparagraph (d) of Paragraph (6) of Subsection B, added "and customs"; in Paragraph (8) of Subsection B, deleted "and make recommendations to the tourism department" and added "for implementation of the provisions of the Off-Highway Motor Vehicle Act"; and added Paragraphs (10) through (19) of Subsection B.

## 66-3-1019. Fund created; disposition.

A. The "trail safety fund" is created in the state treasury. The fund is a nonreverting fund and consists of revenues from off-highway motor vehicle registration and user fees, grants and donations. No more than thirty percent of the fund may be used for administrative overhead, and at least fifty percent shall be devoted to law enforcement and education. Income from investment of the fund shall be credited to the fund. The fund shall be administered by the department, and money in the fund is appropriated to the department to carry out the purposes of the Off-Highway Motor Vehicle Act. Expenditures from the fund shall be by warrant of the secretary of finance and administration upon vouchers signed by the director of the department of game and fish or the director's authorized representative.

B. The department shall make annual distributions from the fund for the following purposes:

(1) administrative;

(2) law enforcement;

(3) education and training;

(4) information system development and management;

(5) resource monitoring and protection and trail building, maintenance and restoration; and

(6) implementation of other provisions of the Off-Highway Motor Vehicle Act.

**History:** Laws 2005, ch. 325, § 21; 2009, ch. 53, § 11.

**ANNOTATIONS**

**The 2009 amendment,** effective April 1, 2009, in Subsection A, added "consists of revenues from off-highway motor vehicle registration and user fees, grants and donations", added the third sentence, deleted "secretary of tourism or the secretary's" and added "director of the department of game and fish or the director's"; deleted former Subsection B, which required the tourism department to develop and maintain trails and staging areas, market safety programs and promote safety for off-highway vehicles; and added Subsection B.

## 66-3-1020. Penalties.

A. A person who violates the provisions of the Off-Highway Motor Vehicle Act is guilty of a penalty assessment misdemeanor. A parent, guardian or custodian who causes or knowingly permits a child under the age of eighteen years to operate an off-highway motor vehicle in violation of the provisions of the Off-Highway Motor Vehicle Act is in violation of that act and subject to the same penalty as the child operating the off-highway motor vehicle in violation of that act.

B. As used in the Off-Highway Motor Vehicle Act, "penalty assessment misdemeanor" means violation of any provision of the Off-Highway Motor Vehicle Act for which a violator may be subject to the following:

| CLASS 1 VIOLATIONS | SECTION VIOLATED | PENALTY ASSESSMENT |
|---|---|---|
| failure to possess a registration certificate or nonresident permit | 66-3-1010.3 | $10.00 |
| violations involving headlights or taillights | 66-3-1010.3 | 10.00 |
| failure to possess an off-highway motor vehicle safety permit | 66-3-1010.3 | 10.00 |
| selling a vehicle that produces noise in excess of ninety-six decibels | 66-3-1010.3 | 10.00 |
| any violation of the Off-Highway Motor Vehicle Act not otherwise specifically defined elsewhere in this section | 66-3-1010.3 | 10.00 |
| CLASS 2 VIOLATIONS | SECTION VIOLATED | PENALTY ASSESSMENT |
| failure to complete a required off-highway motor vehicle safety training course | 66-3-1010.2 | $50.00 |
| operating a vehicle in excess of ten miles per hour within two hundred feet of a business, | | |

| | | |
|---|---|---|
| animal shelter, horseback rider, bicyclist, pedestrian, livestock or occupied dwelling | 66-3-1010.3 | 50.00 |
| a person under the age of eighteen but at least fifteen years of age who operates an off-highway motor vehicle in violation of the supervision requirements of the Off-Highway Motor Vehicle Act | 66-3-1010.3 | 50.00 |
| operating an off-highway motor vehicle that produces noise that exceeds ninety-six decibels | 66-3-1010.3 | 50.00 |
| unauthorized installation, removal, destruction or defacing of a motor vehicle sign | 66-3-1011 | 50.00 |

| CLASS 3 VIOLATIONS | SECTION VIOLATED | PENALTY ASSESSMENT |
|---|---|---|
| operating a vehicle that is not equipped with an approved spark arrester | 66-3-1010.3 | $100.00 |
| operating an off-highway motor vehicle while in pursuit of and with intent to hunt or take a species of animal or bird protected by law, unless otherwise authorized by the state game commission | 66-3-1010.3 | 100.00 |
| operating an off-highway motor vehicle in pursuit of or harassment of livestock in any manner that negatively affects the livestock's condition | 66-3-1010.3 | 100.00 |
| operating an off-highway motor vehicle on or within an earthen tank or other structure meant to water livestock or wildlife | 66-3-1010.3 | 100.00 |

| | | |
|---|---|---|
| operating a motor vehicle in a manner that has a direct negative effect on or interferes with persons engaged in agricultural practices | 66-3-1010.3 | 100.00 |
| a person under the age of eighteen operating an off-highway motor vehicle without wearing eye protection and a safety helmet | 66-3-1010.3 | 100.00 |
| a person under the age of eighteen operating an off-highway motor vehicle while carrying a passenger | 66-3-1010.3 | 100.00 |
| a person under the age of fifteen but at least ten years of age who operates an off-highway motor vehicle in violation of the supervision requirements of the Off-Highway Motor Vehicle Act | 66-3-1010.3 | 100.00 |
| a person under the age of ten operating an all-terrain vehicle or recreational off-highway motor vehicle that is not an age-appropriate size-fit or who operates an off-highway motor vehicle in violation of the supervision requirements of this section | 66-3-1010.3 | 100.00 |

| CLASS 4 VIOLATIONS | SECTION VIOLATED | PENALTY ASSESSMENT |
|---|---|---|
| operating an off-highway motor vehicle in a careless, reckless or negligent manner so as to endanger the person or property of another | 66-3-1010.3 | $200.00 |
| operating an off-highway motor vehicle on any road or area closed to off- highway motor vehicle traffic under | | |

| | | |
|---|---|---|
| local, state or federal regulations | 66-3-1010.3 | 200.00 |
| operating an off-highway motor vehicle on a limited-access highway or freeway | 66-3-1011 | 200.00. |

C. The penalty for second, third and subsequent violations within a three-year time period shall be increased as follows:

(1) a second violation in a class 1 penalty category involving failure to possess a registration certificate or nonresident permit shall be increased to a class 2 penalty category;

(2) any class 2 or class 3 violation for a second or greater infraction within a three-year period shall be increased to the next-highest penalty assessment category; and

(3) each subsequent violation in a class 4 penalty category will result in an additional penalty of two hundred dollars ($200).

D. Multiple violations for the same incident shall be treated as a single event and shall not result in graduated penalties.

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

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

**History:** Laws 2005, ch. 325, § 22; 2009, ch. 53, § 12.

## ANNOTATIONS

**The 2009 amendment,** effective April 1, 2009, in Subsection A, deleted the former language which provided that unless the violation is a felony, a petty misdemeanor or a citation under the Motor Vehicle Code, the violation was a misdemeanor and added the last sentence; in Subsection B, deleted language which provided that when a person is convicted of a felony or misdemeanor, the court may order the person to complete a safety training program and completely rewrote Subsection B; and added Subsections C, D, E and F.

**Application to driving an off-road vehicle while intoxicated.** — Section 66-8-102 NMSA 1978 governs the punishment of the offense of driving an off-road vehicle while intoxicated, not Section 66-3-1020 NMSA of the Off-Highway Motor Vehicle Act. *State v. Natoni*, 2012-NMCA-062, 280 P.3d 304, cert. denied, 2012-NMCERT-005.

Where defendant, who was driving an off-road vehicle on a public road while intoxicated, crashed into a telephone pole; a passenger in the off-road vehicle was injured in the collision; and defendant pled no contest to DWI under Section 66-3-101 NMSA 1978 of the Off-Highway Motor Vehicle Act, defendant's sentence was governed by Section 66-8-102 NMSA 1978, not by Section 66-3-1020 NMSA 1978 of the Off-Highway Motor Vehicle Act. *State v. Natoni*, 2012-NMCA-062, 280 P.3d 304, cert. denied, 2012-NMCERT-005.

## 66-3-1021. Legislative oversight.

In addition to reporting to the legislative finance committee pursuant to the performance review and budgeting process, the department shall report to the appropriate interim committee appointed by the New Mexico legislative council on the status of implementation of the Off-Highway Motor Vehicle Act. The department shall report to the appropriate committee of the legislature on the status of existing and proposed rules and relevant enforcement issues.

**History:** Laws 2009, ch. 53, § 13.

**ANNOTATIONS**

**Emergency clauses.** — Laws 2009, ch. 53, § 16 contained an emergency clause and was approved on April 1, 2009.

# PART 12
# OTHER VEHICLES

## 66-3-1101. Mopeds; standards; operator requirements; application of Motor Vehicle Code.

A. Mopeds shall comply with those motor vehicle safety standards deemed necessary and prescribed by the director of motor vehicles.

B. Operators of mopeds shall have in their possession while operating a moped a valid driver's license of any class or permit, issued to them.

C. Except as provided in Subsections A and B of this section, none of the provisions of the Motor Vehicle Code [66-1-1 NMSA 1978] relating to motor vehicles or motorcycles as defined in that code shall apply to a moped.

D. As used in this section, "moped" means a two-wheeled or three-wheeled vehicle with an automatic transmission and a motor having a piston displacement of less than fifty cubic centimeters, which is capable of propelling the vehicle at a maximum speed of not more than thirty miles per hour on level ground at sea level.

**History:** 1953 Comp., § 64-3-1101, enacted by Laws 1978, ch. 35, § 213; 1981, ch. 361, § 17.

**ANNOTATIONS**

**Moped subject to prohibition against driving while intoxicated.** — A "moped," as defined in Section 66-1-4.11E NMSA 1978 and regulated by this section, is a "vehicle" for the purpose of the prohibition against driving while intoxicated under Section 66-8-102 NMSA 1978. *State v. Saiz*, 2001-NMCA-035, 130 N.M. 333, 24 P.3d 365, cert. denied, 130 N.M. 459, 26 P.3d 103.

## 66-3-1102. Electric personal assistive mobility devices; standards; operator requirements; applicability; penalties.

A. An electric personal assistive mobility device shall be equipped with:

(1) front, rear and side reflectors;

(2) a braking system that enables the operator to bring the device to a controlled stop; and

(3) if operated at any time from one-half hour after sunset to one-half hour before sunrise, a lamp that emits a white light that sufficiently illuminates the area in front of the device.

B. The secretary shall by rule prescribe motor vehicle safety standards applicable to electric personal assistive mobility devices.

C. An operator of an electric personal assistive mobility device traveling on a sidewalk, roadway or bicycle path shall have the rights and duties of a pedestrian and shall exercise due care to avoid colliding with pedestrians. An operator shall yield the right of way to pedestrians.

D. Except as provided in this section, no other provisions of the Motor Vehicle Code [66-1-1 NMSA 1978] shall apply to electric personal assistive mobility devices.

E. An operator who violates a provision of this section shall receive a warning for the first offense. For a second offense, the operator shall be punished by a fine of ten dollars ($10.00). For a third or subsequent offense, in addition to the fine, the electric personal assistive mobility device shall be impounded for up to thirty days.

F. This section does not apply to personal assistive mobility devices used by persons with disabilities.

**History:** Laws 2002, ch. 38, § 1; 2007, ch. 319, § 38.

**ANNOTATIONS**

**The 2007 amendment,** effective June 15, 2007, deleted former Subsection A to eliminate the definition of "electric personal assistive mobility device" and relettered Subsections B to F as Subsections A to E.

## 66-3-1103. Neighborhood electric cars.

A. A neighborhood electric car shall be equipped with head lamps, stop lamps, front and rear turn signal lamps, tail lamps, reflex reflectors, a parking brake, at least one interior and one exterior rear view mirror, a windshield, windshield wipers, a speedometer, an odometer, braking for each wheel, seat belts and a vehicle identification number.

B. Except as provided in Subsection C or D of this section, a neighborhood electric car, properly registered pursuant to the provisions of the Motor Vehicle Code [66-1-1 NMSA 1978], in compliance with the Mandatory Financial Responsibility Act [66-5-201 to 66-5-239 NMSA 1978] and driven by an individual with a valid driver's license, may be operated on any street, roadway or highway under the jurisdiction of either the state or a local authority if the posted maximum speed limit is thirty-five miles per hour or less; provided, a neighborhood electric car may cross at an intersection or permitted crossing point at any street, roadway or highway that has a posted maximum speed limit higher than thirty-five miles per hour.

C. A local authority may prohibit the operation of neighborhood electric cars on any road under its jurisdiction if the governing body of the local authority determines that the prohibition is necessary in the interest of safety.

D. The department of transportation may prohibit the operation of neighborhood electric cars on any road under its jurisdiction if it determines that the prohibition is necessary in the interest of safety.

E. Neighborhood electric cars are exempt from the following provisions:

(1) the emblems or flashing lights requirement for slow-moving vehicles in Section 66-3-887 NMSA 1978;

(2) any requirement for vehicle emission inspections adopted by a local authority pursuant to Subsection C of Section 74-2-4 NMSA 1978; and

(3) the minimum motor displacement requirement of Paragraph (2) of Subsection A of Section 66-7-405 NMSA 1978.

**History:** Laws 2004, ch. 7, § 1; 2004, ch. 96, § 1; 2007, ch. 319, § 39.

**ANNOTATIONS**

**The 2007 amendment,** effective June 15, 2007, deleted from the definition of a neighborhood electric car the characteristics that it is a four-wheeled electric motor vehicle that has a maximum speed of more that twenty miles per hour, but less than twenty-five miles per hour, and complies with the federal requirement specified in 49 CFR 571.500.

# ARTICLE 4
# Licensing of Dealers and Wreckers

## 66-4-1. Dealers, wholesalers and distributors of vehicles and title service companies must be licensed; presumption of conducting business.

A. A person, unless licensed to do so by the department, shall not carry on or conduct the active trade or business of:

(1) a dealer in motor vehicles of a type subject to registration pursuant to the Motor Vehicle Code, including:

(a) trailers, but not trailers sold as kits;

(b) recreational vehicles designed to be towed;

(c) motorcycles over fifty-five cubic centimeters; and

(d) off-highway motor vehicles pursuant to the Off-Highway Motor Vehicle Act [66-3-1001 to 66-3-1016 and 66-3-1017 to 66-3-1020 NMSA 1978];

(2) wholesaling of vehicles. Any person who sells or offers for sale vehicles of a type subject to registration in this state, to a vehicle dealer licensed pursuant to the Motor Vehicle Code or who is franchised by a manufacturer, distributor or vehicle dealer to sell or promote the sale of vehicles dealt in by such manufacturer, distributor or vehicle dealer shall be presumed to be conducting the business of wholesaling;

(3) distributing of vehicles. Any person who distributes or sells new or used motor vehicles to dealers and who is not a manufacturer shall be presumed to be conducting the business of distributing vehicles; or

(4) a title service company. Any person who for consideration prepares or submits applications for the registration of or title to vehicles shall be presumed to be engaging in the business of a title service company.

B. Application for a dealer, wholesaler, distributor or title service company license shall be made upon the form prescribed by the department and shall contain the name and address of the applicant and, when the applicant is a partnership, the name and address of each partner or, when the applicant is a corporation, the names of the principal officers of the corporation and the state in which incorporated and the place where the business is to be conducted and the nature of the business and such other information as may be required by the department. Every application shall be verified by the oath or affirmation of the applicant, if an individual, or, in the event an applicant is a partnership or corporation, by a partner or officer of the partnership or corporation. Every application shall be accompanied by the fee required by law.

C. To ensure that a dealer, wholesaler, distributor or title service company complies with this section, the secretary may apply to a district court of this state to have a person operating without a license as required by this section or operating without the bond required by Section 66-4-7 NMSA 1978 enjoined from engaging in business until that person complies with the requirements of licensing as provided by this section and the bonding requirements of Section 66-4-7 NMSA 1978.

**History:** 1953 Comp., § 64-4-1, enacted by Laws 1978, ch. 35, § 214; 1981, ch. 361, § 18; 1989, ch. 318, § 12; 1998, ch. 48, § 12; 1999, ch. 122, § 2; 2003, ch. 410, § 1; 2005, ch. 324, § 12; 2005, ch. 325, § 23.

## ANNOTATIONS

**Cross references.** — For the definition of "dealer", *see* 66-1-4.4 NMSA 1978.

For penalty for violation, *see* 66-4-9 NMSA 1978.

For the fee for a license, *see* 66-6-18 NMSA 1978.

**Compiler's notes.** — Court decisions and attorney general's opinions decided pursuant to former, similar provisions have been placed under this section.

**2005 Multiple Amendments.** — Laws 2005, ch. 324, § 12 and Laws 2005, ch. 325, § 23 enacted different amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 2005, ch. 325, § 23, as the last act signed by the governor, is set out above and incorporates both amendments. The amendments enacted by Laws 2005, ch. 324, § 12 and Laws 2005, ch. 325, § 23 are described below. To view the session laws in their entirety, *see* the 2005 session laws on *NMOneSource.com*.

Laws 2005, ch. 325, § 23, effective January 1, 2006, added Subsection A(1)(d) to provide that a person shall not act as a dealer of off-highway motor vehicles without a license.

Laws 2005, ch. 324, § 12, effective January 1, 2006, deleted former Subsection A(2), which provided that a person shall not conduct the business of dismantling of a vehicle for resale of the parts without a license and that a person possessing three or more wrecked or dismantled vehicles and who sells used parts is presumed to be conducting the business of wrecking or dismantling vehicles; deleted "wrecker of vehicles license" in Subsection B; deleted former Subsection C, which provided that a metal processor or dealer in scrap who dismantles, shreds, crushes of destroys more that three vehicles within a year shall be licensed; deleted "wrecker of vehicles" in Subsection C; deleted former Subsection E, which provided for the issuance of injunctions against persons doing business without a license; and deleted Subsection F, which provided that a temporary restraining order shall not be issued against a person who has complied with this section.

**The 2003 amendment,** effective June 20, 2003, substituted "A" for "No" at the beginning of Subsections A and F; inserted "not" following "the department, shall" in Subsection A; added "including" at the end of Paragraph A(1); added Subparagraphs A(1)(a) to (c); deleted "wrecking or" at the beginning of Paragraph A(2); deleted "provided, however, that if any such person also sells a vehicle at retail, he shall be deemed to be a dealer and is subject to the dealer-licensing provisions of the Motor Vehicle Code" at the end of Paragraph A(3); substituted "A" for "Any" at the beginning of Subsection C; deleted "In order" at the beginning of Subsection D; deleted "forthwith" following "the court may" in Subsection E; and deleted "not" following "restraining order shall" in Subsection F.

**The 1999 amendment,** effective July 1, 1999, in the section heading, inserted "and title service companies"; in Subsection A(2), in the second sentence deleted "motor" preceding vehicle parts, and deleted "or motor vehicle" following "vehicle" throughout; inserted Subsection A(5); in Subsection B, in the first sentence, substituted "dealer, wholesaler, distributor or wrecker of vehicles license or a title service company" for "dealer's, wholesaler's, distributor's or wrecker's"; in Subsection C, deleted "or motor vehicles" following "vehicles"; in Subsection D, inserted "of vehicles or title service company", inserted "or operating without the bond required by Section 66-4-7 NMSA 1978", and inserted "and the bonding requirements of Section 66-4-7 NMSA 1978" at the end; in Subsection E, in the first sentence, substituted "unlicensed person" for "unlicensed operator"; and made stylistic and gender neutral changes throughout the section.

**The 1998 amendment,** effective July 1, 1998, in Subsection A, substituted "department" for "division" and inserted "active trade or"; in Paragraph A(1), deleted "vehicles or" preceding "motor' and deleted "trailers, semitrailers, house trailers or pole trailers" following "vehicles", inserted "pursuant to the Motor Vehicle Code"; substituted "pursuant to" for "under" in Paragraph A(3); in Subsection B, substituted "department"

for "division" twice and deleted "or places" following "place"; substituted "pursuant to" for "under" in Subsection C; and substituted "secretary" for "director" in Subsection D.

**The 1989 amendment,** effective July 1, 1989, in Subsection A(2) deleted ", firm or corporation" following "person" near the beginning of the second sentence, and substituted "and who regularly sells or offers for sale used vehicles or used motor vehicle parts" for "or parts" near the middle of that sentence; added Subsections D through F; and made minor stylistic changes throughout the section.

**Illegality of unlicensed dealer's contract must be affirmatively pled.** — Paragraph C of Rule 1-008 NMRA requires affirmative pleading of the defense of illegality of a contract made by an unlicensed dealer. *L. & B. Equip. Co. v. McDonald*, 1954-NMSC-100, 58 N.M. 709, 275 P.2d 639.

**Fact that alleged principal was licensed automobile dealer** under Section 64-8-1, 1953 Comp. (similar to this section) and had, likewise, procured the bond required by Section 64-8-6, 1953 Comp. (similar to Section 66-4-7 NMSA 1978) was considered favorably in determination that agency relationship existed. *State v. DeBaca*, 1971-NMCA-092, 82 N.M. 727, 487 P.2d 155.

**All qualifying firms issued licenses even with same trade name.** — Whether or not there may be problems concerning the reservation of trade names did not affect the operations of the department (now division) and the department could not refuse to issue licenses for the reason that there are a number of firms using the same name, the department should issue a license to a firm if it meets the statutory requirement. 1967 Op. Att'y Gen. No. 67-13.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 150 to 152.

Licensing and registration of vehicle dealers, 57 A.L.R.2d 1265, 7 A.L.R.3d 1173.

53 C.J.S. Licenses § 34; 60 C.J.S. Motor Vehicles §§ 40, 41.

## 66-4-1.1. Auto recycler license; presumption of conducting business.

A. A person desiring to engage in the business of wrecking or dismantling vehicles for the purpose of reselling parts or scrap material shall apply to the department for an auto recycler license. A person possessing three or more wrecked, dismantled or partially wrecked or dismantled vehicles who regularly sells or offers for sale used vehicle parts or vehicle scrap material within the period of one year shall be presumed to be conducting business as an auto recycler.

B. An auto recycler licensee shall not sell motor vehicles of a type subject to registration pursuant to the Motor Vehicle Code [66-1-1 NMSA 1978].

C. Application for an auto recycler license shall be made upon the form prescribed by the department and shall contain the name and address of the applicant and, when the applicant is a partnership, the name and address of each partner or, when the applicant is a corporation, the names of the principal officers of the corporation and the state in which incorporated and the place where the business is to be conducted and the nature of the business and such other information as may be required by the department. Every application shall be verified by the oath or affirmation of the applicant, if an individual, or, in the event an applicant is a partnership or corporation, by a partner or officer of the partnership or corporation. Every application shall be accompanied by the fee required by law.

D. To ensure that an auto recycler complies with this section, the secretary may apply to a district court of this state to have a person operating without a license as required by this section or operating without the bond required by Section 66-4-7 NMSA 1978 enjoined from engaging in business until that person complies with the requirements of licensing as provided by this section and the bonding requirements of Section 66-4-7 NMSA 1978.

**History:** Laws 2005, ch. 324, § 13.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 324, § 21 made the section effective January 1, 2006.

## 66-4-2. Department to issue license.

A. Except for recreational vehicles, the department, upon receiving an initial nonfranchise dealership application accompanied by the required fee and when satisfied that the applicant has completed eight hours of education as approved by the department and complies with the laws of this state with reference to the registration of vehicles and certificates of title and the provisions of the Motor Vehicle Code, shall issue to the applicant a license that entitles the licensee to conduct the business of a dealer, auto recycler or title service company. The license may be renewed upon application, payment of the fee required by law and completion every year of four hours of continuing education as approved by the department. A licensee shall not lease, loan, transfer or sell its license to another person, and no person shall use the license of another person for any purpose.

B. A dealer or auto recycler licensee, before moving any of the licensee's places of business or opening any additional place of business, shall apply to the department for and obtain a supplemental license for which no fee shall be charged. No supplemental license shall be issued to a dealer, other than a dealer in motorcycles only, for an additional place of business unless the business already has an established place of business.

C. A person to whom the department has issued a license to conduct the business of a dealer in motorcycles only is also deemed a recycler of motorcycles without additional license.

**History:** 1953 Comp., § 64-4-2, enacted by Laws 1978, ch. 35, § 215; 1991, ch. 196, § 1; 1999, ch. 122, § 3; 2005, ch. 15, § 1; 2005, ch. 324, § 14; 2007, ch. 318, § 1; 2007, ch. 319, § 40; 2012, ch. 59, § 1; 2019, ch. 216, § 1.

## ANNOTATIONS

**Cross references.** — For penalty for violation of section, *see* 66-4-9 NMSA 1978.

**The 2019 amendment,** effective June 14, 2019, removed the "good character" requirement to be licensed to conduct business as a dealer, auto recycler or title insurance company, and modified continuing education requirements for dealers, auto recyclers, and title company licensees; and in Subsection A, after "satisfied that the applicant", deleted "is of good character", after "eight hours of education", deleted "training", and after "completion every", deleted "two years" and added "year".

**The 2012 amendment,** effective July 1, 2012, required continuing education for renewal of a nonfranchise dealership license and in Subsection A, in the first sentence, after "approved by the", deleted "division" and added "department"; and in the second sentence, after "required by law", added "and completion every two years of four hours of continuing education as approved by the department".

**The 2007 amendment,** effective June 15, 2007, provided that a licensee shall not lease, loan, transfer or sell its license and that no person shall use the license of another person; provided that a supplemental license shall only be issued to a dealer, other than a dealer in motorcycles, for an additional place of business unless the business has an established place of business; eliminated staggered system for licensing; and eliminated the provision for renewal of wrecker of vehicles licenses.

**The 2005 amendment,** effective January 1, 2006, in Subsections A and B, changed "wrecker of vehicles" to "auto recycler"; in Subsection D, changed "wreckers of vehicles" to "auto recyclers"; and added Subsection E to provide that the holder of a wrecker of vehicles license shall apply for an auto recycler license when the holder would renew the wrecker of vehicles license.

This section was also amended by Laws 2005, ch. 15, § 1. It was set out as amended by Laws 2005, ch. 324, § 14. *See* 12-1-8 NMSA 1978.

**The 1999 amendment,** effective July 1, 1999, substituted "department" for "division" throughout the section; in Subsection A, in the first sentence, inserted "or title service company" and substituted "period for" for "calendar year in", and in the second sentence substituted "the last day of the period for which it was issued" for "December 31 of each year"; in Subsection B, inserted "dealer or wrecker of vehicles" and

substituted "the licensee's" for "his" preceding "places of business"; and added Subsection D.

**The 1991 amendment,** effective June 14, 1991, added the phrase beginning "No supplemental license" and Paragraphs (1) and (2) in Subsection B and made minor stylistic changes in Subsections A and C.

**All qualifying firms issued licenses even with same trade name.** — Whether or not there may be problems concerning the reservation of trade names did not affect the operations of the department (now division) and the department could not refuse to issue licenses for the reason that there are a number of firms using the same name, the department should issue a license to a firm if it meets the statutory requirement. 1967 Op. Att'y Gen. No. 67-13.

## 66-4-2.1. Recreational vehicle dealers; licensure; special events.

A. A dealer, as defined in Section 66-1-4.4 NMSA 1978, shall apply to and be issued by the department a license to deal in recreational vehicles if the department finds the applicant is in compliance with department rules regarding registration of vehicles, certificates of title and all provisions of the Motor Vehicle Code [66-1-1 NMSA 1978]. Renewal of a license shall be according to rules of the department for a period of twelve months.

B. The department shall issue a "special event" license to a licensed New Mexico recreational vehicle dealer to conduct business at a location other than the dealer's listed primary place of business, upon forms issued by the department, provided:

(1) the special event is focused on the business of recreational vehicles as conducted at the applicant's primary place of business;

(2) the location of the special event is an established place of business; and

(3) the majority of recreational vehicle dealers in the county where the special event is to be held are notified, in a manner approved by the department, of the special event and offered the opportunity to participate and offer vehicles for sale under identical conditions established by and for the applicant and approved by the department. The applicant may charge other recreational vehicle dealers a participation fee sufficient to defray the actual expenses of the special event; or

(4) if the special event is sponsored by a national recreational vehicle organization and the applicant is not licensed to do business in New Mexico, the application is accompanied by an application and a certified letter from that New Mexico licensed dealer committing to serve as host dealer to the out-of-state applicant.

**History:** Laws 2005, ch. 15, § 2.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch 15. contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

## 66-4-2.2. Off-site sales.

A. Except as otherwise provided in this section, a New Mexico licensed dealer or the holder of a security interest filed pursuant to Section 66-3-201 NMSA 1978 shall not sell a vehicle or offer a motor vehicle for sale at a location other than the licensed dealer's established place of business, as defined in Section 66-1-4.5 NMSA 1978; provided that for purposes of this subsection, a vehicle shall not be deemed offered for sale at a location other than the licensed dealer's established place of business if the vehicle is in use for a purpose other than to sell or offer the vehicle for sale.

B. A New Mexico licensed dealer, before offering a vehicle or vessel for sale at a temporary off-site location, shall apply to the department for and obtain an off-site permit. No off-site permit shall be issued to a New Mexico licensed dealer, other than a dealer in motorcycles only, for a temporary off-site location unless the dealer:

(1) documents to the satisfaction of the department that the dealer has offered the majority of dealers, other than dealers in motorcycles only, in the county in which the proposed temporary off-site location would be located, the opportunity to offer vehicles or vessels for sale at the proposed temporary off-site location; provided that the offer shall be for sale of vehicles or vessels at all times during which the applicant proposes to sell vehicles or vessels and shall not be conditioned upon the payment of a fee by a dealer to whom the off-site permit is addressed that is greater than a fair share of the actual expenses; and

(2) obtains either an original rider to the dealer's existing corporate surety bond or an original corporate surety bond in compliance with the provisions of Section 66-4-7 NMSA 1978 to cover the proposed temporary off-site location and dates of sale.

C. All temporary off-site locations shall be identified by prominently displayed signs identifying the names of the New Mexico licensed dealers selling vehicles or vessels at the temporary off-site location and shall be of sufficient size or space to permit the safe display of the vehicles or vessels offered for sale.

**History:** Laws 2007, ch. 319, § 41; 2023, ch. 137, § 2.

**ANNOTATIONS**

**The 2023 amendment,** effective July 1, 2023, limited the locations where a motor vehicle may be sold or offered for sale; added a new Subsection A and redesignated former Subsections A and B as Subsections B and C, respectively.

## 66-4-3. Refusal to issue license; cancellation or suspension of license or use of temporary permits; hearing; appeal.

A. The department may refuse to issue a license for just cause and may cancel or suspend a license or use of a temporary registration permit, demonstration permit or transport permit for violation of the Motor Vehicle Code. The action authorized in this section shall be taken only after a hearing before the administrative hearings office. Within ten days after completion of the hearing, the hearing officer designated to conduct the hearing shall cause to be served upon all parties, in the manner provided in Section 66-2-11 NMSA 1978, the hearing officer's findings and decision. The decision shall be:

(1) granting a license or refusing to grant a license;

(2) continuing a license, canceling a license or suspending a license for a time stated; or

(3) continuing use of dealer plates and temporary registration permits, demonstration permits or transport permits, canceling dealer plates and temporary registration permits, demonstration permits or transport permits or suspending use of temporary registration permits, demonstration permits or transport permits for a time stated.

B. A party aggrieved by the hearing officer's decision may file an appeal in the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

**History:** 1953 Comp., § 64-4-3, enacted by Laws 1978, ch. 35, § 216; 1998, ch. 55, § 77; 1999, ch. 265, § 78; 2007, ch. 319, § 42; 2015, ch. 73, § 29.

**ANNOTATIONS**

**Cross references.** — For appeal of final decisions by agencies to district court, *see* 39-3-1.1 NMSA 1978.

For temporary permits, *see* 66-3-6 NMSA 1978.

For special registration plates, *see* 66-3-401 NMSA 1978.

For penalty for violation of section, *see* 66-4-9 NMSA 1978.

**The 2015 amendment,** effective July 1, 2015, required a hearing before the administrative hearings office prior to the taxation and revenue department canceling or suspending a license or use of a temporary registration permit, demonstration permit or transport permit; in Subsection A, after "Motor Vehicle Code. The", deleted "department shall take the", after "authorized in this section", added "shall be taken", after "only after", added "a", and after "hearing", deleted the remainder of the subsection; deleted

Subsections B and C; deleted the subsection designation from Subsection D, added "before the administrative hearings office" and added the remainder of the language from former Subsection D to Subsection A, after "hearing, the", deleted "secretary" and added "hearing officer designated to conduct the hearing", and after "NMSA 1978, the", deleted "secretary's" and added "hearing officer's"; redesignated former Subsection E as Subsection B; and in Subsection B, after "aggrieved by the", deleted "secretary's" and added "hearing officer's".

**The 2007 amendment,** effective June 15, 2007, amended Subsection A to specify temporary registration permits, demonstrations permits and transport permits as the types of permits that may be cancelled.

**The 1999 amendment,** effective July 1, 1999, substituted "department" for "division" and "secretary" for "director" throughout the section, and substituted "Section 39-3-1.1" for "Section 12-8A-1" in Subsection E.

**The 1998 amendment,** effective September 1, 1998, in Subsection A, deleted "herein" following "action", inserted "in this section", deleted "such" preceding "hearing", and substituted "66-2-11 NMSA 1978" for "64-2-11 NMSA 1978"; in Subsection B, deleted "and regulations" following "rules"; in Subsection D, substituted "66-2-11 NMSA 1978" for "64-2-11 NMSA 1953"; in Paragraphs D(2) and (3), substituted "canceling" for "cancellation of" and "suspending" for "suspension of"; rewrote Subsection E; and made minor stylistic changes throughout the section.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 60 C.J.S. Motor Vehicles § 100.

## 66-4-4. Criminal offender's character evaluation.

The provisions of the Criminal Offender Employment Act [28-2-1 to 28-2-6 NMSA 1978] govern any consideration of criminal records required or permitted by Sections 66-4-1 through 66-4-9 NMSA 1978.

**History:** 1953 Comp., § 64-4-4, enacted by Laws 1978, ch. 35, § 217; 1999, ch. 122, § 4.

**ANNOTATIONS**

**Cross references.** — For penalty for violation of section, *see* 66-4-9 NMSA 1978.

**The 1999 amendment,** effective July 1, 1999, substituted "66-4-1 through 66-4-9 NMSA 1978" for "64-4-1 through 64-4-9 NMSA 1953".

## 66-4-5. Records of purchases, of sales and of vehicles dismantled.

A. A dealer licensee shall maintain a record in a form prescribed by the department of every vehicle of a type subject to registration pursuant to the provisions of the Motor

Vehicle Code [66-1-1 NMSA 1978] that is bought, sold or exchanged by the licensee or received by the licensee for sale or exchange.

B. An auto recycler licensee shall maintain a record in a form prescribed by the department of:

(1) every vehicle of a type subject to registration pursuant to the provisions of the Motor Vehicle Code that is bought, exchanged or received and dismantled or otherwise destroyed by the licensee; and

(2) every motor vehicle body, chassis or engine that is sold or otherwise disposed of by the licensee.

C. Every record required to be maintained pursuant to Subsection A or B of this section shall state the name and address of the person from whom the vehicle was purchased or acquired and the date of the purchase; the name and address of the person to whom the vehicle or the motor vehicle body, chassis or engine was sold or otherwise disposed of and the date of the sale or disposition; and a sufficient description of every vehicle or motor vehicle body, chassis or engine by name and identifying numbers sufficient to identify the vehicle or motor vehicle body, chassis or engine.

D. A title service company licensee shall maintain a record of:

(1) every temporary registration permit issued;

(2) every title and registration application accepted for processing; and

(3) any other information prescribed by the department.

E. Every record required to be maintained pursuant to the provisions of this section shall be retained for a period of three years from the end of the year in which the record was created and shall be open to inspection by any peace officer or officer of the department during reasonable business hours. If the licensee fails to maintain the records required or to permit their inspection during reasonable business hours, the license becomes invalid.

**History:** 1953 Comp., § 64-4-5, enacted by Laws 1978, ch. 35, § 218; 1999, ch. 122, § 5; 2005, ch. 324, § 15; 2007, ch. 319, § 43.

## ANNOTATIONS

**Cross references.** — For the police authority of the division of motor vehicles, *see* 66-2-12 NMSA 1978.

For penalty for violation of section, *see* 66-4-9 NMSA 1978.

**The 2007 amendment,** effective June 15, 2007, to amended Subsection C to provide that the records maintained by an auto recycler shall contain the same information as records maintained by dealers and changed "temporary registration plate" to "temporary registration permit".

**The 2005 amendment,** effective January 1, 2006, deleted "wrecker of vehicles" in Subsection A; added Subsection B(1) to provide that an auto recycler licensee shall maintain a record in a form prescribed by the department of every vehicle that is subject to registration that is acquired and dismantled by the licensee; and deleted former Subsection B(3), which provided that a licensee was required to keep a record of every vehicle which was bought or dismantled by the licensee.

**The 1999 amendment,** effective July 1, 1999, in Subsection A, substituted "department" for "division"; in Subsection A(1), substituted "pursuant to the provisions of the Motor Vehicle Code that" for "hereunder which"; in Subsection A(2), deleted "motor vehicle" preceding "engine"; in Subsection B, inserted "required to be maintained pursuant to Subsection A of this section", twice deleted "motor vehicle" following "chassis or", inserted "or motor vehicle" preceding "body", twice substituted "of the purchase" or "of the sale or disposition" for "thereof", inserted "sufficient to identify the vehicle or motor vehicle body, chassis or engine", and made numerous stylistic changes; inserted Subsection C; redesignated former Subsection C as Subsection D, and in Subsection D deleted "such" preceding "record", inserted "required to be maintained . . . was created and", substituted "department" for "division", and added the second sentence.

## 66-4-6. Place of business.

A. No license shall be issued to a dealer or auto recycler unless an established place of business as defined in the Motor Vehicle Code [66-1-1 NMSA 1978] is maintained by the dealer or auto recycler. Each license to carry on or conduct the business of a dealer or auto recycler becomes invalid when the licensee fails to maintain an established place of business as defined in the Motor Vehicle Code.

B. No license shall be issued to a title service company unless that company maintains a physical place of business accessible to the public and provides the department with the physical address of that place of business. A place of business shall be open to inspection by a peace officer or the department during reasonable business hours. The license of the title service company may be suspended or canceled if the title service company fails to maintain a place of business accessible to the public or does not allow inspection during reasonable business hours by a peace officer or the department.

**History:** 1953 Comp., § 64-4-6, enacted by Laws 1978, ch. 35, § 219; 1999, ch. 122, § 6; 2005, ch. 324, § 16.

**ANNOTATIONS**

**Cross references.** — For the definition of "additional place of business", *see* 66-1-4.1 NMSA 1978.

For the definition of "established place of business", *see* 66-1-4.5 NMSA 1978.

For penalty for violation of section, *see* 66-4-9 NMSA 1978.

**The 2005 amendment,** effective January 1, 2006, changed "wrecker of vehicles" to "auto recycler".

**The 1999 amendment,** effective July 1, 1999, in the section heading, deleted "Established"; in Subsection A, made several stylistic changes; and added Subsection B.

## 66-4-7. Dealers, wholesalers, distributors and auto recyclers; title service companies; dealers of motorcycles only; bond.

A. Before issuance of any dealer's license, wholesaler's license, distributor's license, auto recycler's license or title service company license, the applicant shall procure and file with the department a corporate surety bond in the amount of fifty thousand dollars ($50,000). An applicant for a dealer's license for motorcycles only shall procure and file with the department a corporate surety bond in the amount of twelve thousand five hundred dollars ($12,500). The corporate surety shall be licensed by the public regulation commission or a successor entity to do business in this state as a surety and the form of the bond shall be approved by the attorney general. The bond shall be payable to the state for the use and benefit of the purchaser and the purchaser's vendees, conditioned upon payment of any loss, damage and expense sustained by the purchaser or the purchaser's vendees, or both, by reason of failure of the title of the vendor, by any fraudulent misrepresentations or by any breach of warranty as to freedom from liens on the motor vehicle or motorcycle sold by the dealer, wholesaler, distributor, dealer of motorcycles only or auto recycler. The bond shall be continuous in form and limited to the payment of fifty thousand dollars ($50,000) in total aggregate liability on a dealer's license, wholesaler's license, distributor's license, auto recycler's license or a title service company license and twelve thousand five hundred dollars ($12,500) on a dealer's license for motorcycles only.

B. No applicant for a dealer's license, wholesaler's license, distributor's license or dealer's license for motorcycles only who files bond in the amount and form specified in Subsection A of this section shall be required to file any additional bond to conduct a business of wrecking or dismantling motor vehicles or motorcycles. Conversely, no applicant for an auto recycler's license who files bond in the amount and form specified in Subsection A of this section shall be required to file any additional bond to conduct a business of dealer, distributor, wholesaler or dealer of motorcycles only.

C. In lieu of the bond required in this section, the dealer, wholesaler, distributor, auto recycler or dealer of motorcycles only may elect to file with the department the

equivalent amount of cash or bonds of the United States or New Mexico or of any political subdivision of the state.

D. The license of a dealer, wholesaler, distributor or auto recycler or of a title service company may be suspended or canceled if the dealer, wholesaler, distributor, auto recycler or title service company fails to have in effect the required bond or other security.

**History:** 1953 Comp., § 64-4-7, enacted by Laws 1978, ch. 35, § 220; 1981, ch. 361, § 19; 1983, ch. 238, § 1; 1998, ch. 48, § 13; 1999, ch. 122, § 7; 2005, ch. 324, § 17.

## ANNOTATIONS

**Cross references.** — For definition of "division", *see* 66-1-4.4 NMSA 1978.

For the penalty for violation of this section, *see* 66-4-9 NMSA 1978.

**The 2005 amendment,** effective January 1, 2006, changed "wrecker of vehicles" to "auto recycler".

**The 1999 amendment,** effective July 1, 1999, in the section heading, inserted "title service companies"; In Subsection A, in the first sentence, inserted "license or title service company", in the third sentence substituted "public regulation" for "state corporation", and in the fifth sentence inserted "or a title service company license; and added Subsection D.

**The 1998 amendment,** effective July 1, 1998, in the section heading, deleted "house trailer dealers"; rewrote Subsection A; in Subsection B, deleted "house trailer dealer's license" following "license", deleted "house trailers" following "vehicles", deleted "of motor vehicles" in two places, and deleted "of motor vehicles, house trailer dealer"; and rewrote Subsection C.

**Purpose of bond.** — The bond, required by Section 66-4-7A NMSA 1978, covers fraudulent misrepresentations and omissions by the dealer during the sale of a vehicle. *Rubio v. Bob Crow Chrysler-Plymouth-Dodge*, 145 F. Supp.2d 1248 (D. N.M. 2001).

**Purpose of bond.** — The auto dealer's bond in Section 66-4-7 NMSA 1978 is to protect purchasers from failure of title and is applicable to other acts of alleged fraud or misrepresentation which cause a failure of title. *Morey v. Miano*, 141 F.Supp. 2d 1061 (D.N.M. 2001)

**Conditions of payment.** — The statute covers three separate conditions of payment: failure of title of the vendor, any fraudulent representations and breach of warranty as to freedom from liens. *McAlpine v. Zangara Dodge, Inc.*, 2008-NMCA-064, 144 N.M. 61, 183 P.3d 946.

**Where the surety had notice and an opportunity to defend its principal,** but failed to do so, the surety is bound by default judgment against the principal. *McAlpine v. Zangara Dodge, Inc.*, 2008-NMCA-064, 144 N.M. 61, 183 P.3d 946.

**Bond was intended not only for protection of a purchaser** of an automobile from the bonded dealer, but also a wholesale seller. *Commercial Ins. Co. v. Watson*, 261 F.2d 143 (10th Cir. 1958); superseded by statute *McAlpine v. Zangara Dodge, Inc.*, 2008-NMCA-064, 144 N.M. 90, 183 P.3d 975.

**Bond allows recovery of reasonable attorney's fees for appeal.** — Under the surety's bond guaranteeing the payment of any loss or damages resulting from failure of title, purchaser is entitled to recover reasonable attorney fees for representation on appeal. *Yoakum v. Western Cas. & Sur. Co.*, 1965-NMSC-127, 75 N.M. 529, 407 P.2d 367.

**Bond does not cover fraud occurring long after title passed.** — The bond is to protect against failure of title or fraud at the time of the purchase, and does not cover fraud occurring long after title has actually passed. *Prince v. National Union Fire Ins. Co.*, 1965-NMSC-073, 75 N.M. 313, 404 P.2d 137.

**Creditor unprotected by bond.** — Where decedent automobile dealer could not obtain a license to do business as an automobile dealer or obtain a statutory dealer's bond and dealer's friend obtained bond and license for him, customer who gave car to dealer which he subsequently sold and then dealer died was not entitled to protection of statutory dealer's bond since customer was in reality a creditor unprotected by bond. *Kerr v. Schwartz*, 1970-NMSC-126, 82 N.M. 63, 475 P.2d 457.

**Section not applicable.** — This section is not applicable where a vehicle was intended to be collateral on a loan and not a purchase. *Bennett v. Western Sur. Co.*, 1980-NMSC-108, 95 N.M. 13, 618 P.2d 357.

**Fraud not consummated until after title hypothecated to bank.** — Bonding company is liable under its policy on the ground that although it was not in force when possession and title to the car were fraudulently taken on January 16, 1957, and the surety bond was issued on the following January 21, and the bond would not be retroactive for frauds perpetrated prior to its effective date, though the fraud might have been conceived prior to the issuance of the bond, it was not consummated until after the title to the automobile was hypothecated to the bank and defendant received the proceeds of the loan some time after the effective date of the bond. *Commercial Ins. Co. v. Watson*, 261 F.2d 143 (10th Cir. 1958).

**Noncompliance with title transfer provisions not failure of title.** — The provisions refer to the duties of the dealer and transferee, but noncompliance therewith cannot be considered a failure of title, fraudulent misrepresentation, or breach of warranty as to freedom from liens on a motor vehicle. *Prince v. National Union Fire Ins. Co.*, 1965-NMSC-073, 75 N.M. 313, 404 P.2d 137.

**Fact that alleged principal was licensed automobile dealer** under Section 64-8-1, 1953 Comp. (similar to Section 66-4-1 NMSA 1978) and had, likewise, procured the bond required by Section 64-8-6, 1953 Comp. (similar to this section), was considered favorably in determination that agency relationship existed. *State v. DeBaca*, 1971-NMCA-092, 82 N.M. 727, 487 P.2d 155.

**Section did not apply to mobile homes.** — Section 64-8-6, 1953 Comp. (similar to this section), did not apply to the purchase of mobile homes; its bond requirements applied only to the sale of motor vehicles, and a mobile home, being without motive power, could not be a motor vehicle within the meaning of Section 64-8-6, 1953 Comp. *Lewallen v. Elmore Mobile Homes, Inc.*, 1976-NMCA-056, 89 N.M. 323, 551 P.2d 1370.

## 66-4-8. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 2003, ch. 410, § 9 repealed 66-4-8 NMSA 1978, as enacted by Laws 1978, ch. 35, § 221, relating to exemptions from licensing and bond provisions, effective June 20, 2003. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com.*

## 66-4-9. Penalty for destroying or dismantling in violation of certain sections of the Motor Vehicle Code.

A. Any person violating any provision of Sections 66-3-119, 66-3-121, 66-3-123 through 66-3-125, 66-4-1 through 66-4-7 and 66-4-9 NMSA 1978 or Section 1 [66-4-10 NMSA 1978] of this 2018 act is guilty of a misdemeanor and shall be punished by a fine of three hundred dollars ($300) or by imprisonment for not less than thirty days or both.

B. The penalty upon second conviction of such offense shall be that provided for a fourth degree felony.

**History:** 1953 Comp., § 64-4-9, enacted by Laws 1978, ch. 35, § 222; 2018, ch. 75, § 7.

**ANNOTATIONS**

**Cross references.** — For the violation of an offense declared a felony in the Motor Vehicle Code, *see* 66-8-9 NMSA 1978.

For the penalty provided for a fourth-degree felony, *see* 31-18-15 NMSA 1978.

**The 2018 amendment,** effective January 1, 2019, revised the applicable statutory references; in the catchline, after "violation of", deleted "the act" and added "certain sections of the Motor Vehicle Code"; and after "NMSA 1978" added "or Section 1 of this 2018 act".

## 66-4-10. Auto recyclers; notification of purchase.

A. Prior to taking actual possession of a vehicle that an auto recycler has purchased, the auto recycler shall verify with the department if the vehicle has been reported stolen by checking an electronic system maintained by the department. The auto recycler shall include the seller's name, address, contact information and unique auto recycling license number of the purchaser, unless the purchaser is not a licensed auto recycler, in which case the auto recycler shall include the unique number of the purchaser's government-issued identification document.

B. Within two business days following the date the vehicle purchase transaction is completed, the auto recycler shall report the purchase to the department in an electronic format.

C. The reporting requirements pursuant to Subsection B of this section shall include:

(1) the name, address and contact information of the seller and the purchaser;

(2) the unique auto recycling license number of the seller, unless the seller is not a licensed auto recycler, in which case the unique number of the seller's government-issued identification document;

(3) the unique auto recycling license number of the purchaser, unless the purchaser is not a licensed auto recycler, in which case the unique number of the purchaser's government-issued identification document;

(4) the make, model, year, vehicle identification number and, if available, current odometer reading of the vehicle;

(5) the dates of the transfer of ownership of the vehicle;

(6) a statement specifying if the vehicle was, or will be, crushed, disposed of or used for other purposes; and

(7) a statement specifying if the vehicle is intended for export outside of the United States.

D. The department shall maintain and make available to auto recyclers an electronic system that allows auto recyclers to verify, prior to taking actual possession of a vehicle that an auto recycler has purchased, that the vehicle has not been reported stolen. If the electronic system shows that the vehicle was reported stolen, the auto recycler shall not complete the transaction and shall notify a law enforcement agency of the current location of the vehicle and identification information provided by the person attempting to transfer ownership of the vehicle. If the electronic system shows that the vehicle was not reported stolen, the auto recycler may proceed with the transaction and shall not be

held criminally or civilly liable if the vehicle was stolen, unless the auto recycler had knowledge that the vehicle was stolen.

E. The department shall make information contained in the electronic system available, without charge and upon request, to any law enforcement agency or the department, when the person acting on behalf of the agency or department is acting within the course and scope of the agency's or department's duties. Except as authorized by this section, the department shall not release personally identifiable information received under this section.

F. This section shall not apply to sales at salvage pools.

**History:** Laws 2018, ch. 75, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2018, ch. 75, § 8 made Laws 2018, ch. 75, § 1 effective January 1, 2019.

# ARTICLE 5
# Licensing of Operators and Chauffeurs; Financial Responsibility; Uninsured Motorists' Insurance; Identification Cards

# PART 1
# OPERATORS' AND CHAUFFEURS' LICENSES

## 66-5-1. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1990, ch. 120, § 45 repealed 66-5-1 NMSA 1978, as enacted by Laws 1978, ch. 35, § 223, relating to definitions of "suspension", "revocation", and "cancellation", effective July 1, 1990. For provisions of former section, *see* the 1989 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* 66-1-4.1 to 66-1-4.20 NMSA 1978.

## 66-5-1.1. Definition.

As used in Sections 66-5-8 and 66-5-9 NMSA 1978, "traffic violation" means:

A. failure to obey traffic-control devices, as provided in Section 66-7-104 NMSA 1978;

B. failure to obey traffic-control signals, as provided in Section 66-7-105 NMSA 1978;

C. speeding, as provided in Section 66-7-301 NMSA 1978;

D. failure to yield, as provided in Sections 66-7-328 through 66-7-332.1 NMSA 1978;

E. child not in restraint device or seat belt, as provided in Section 66-7-369 NMSA 1978;

F. failure to properly fasten safety belt, as provided in Section 66-7-372 NMSA 1978;

G. homicide by vehicle, as provided in Section 66-8-101 NMSA 1978;

H. injury to pregnant woman by vehicle, as provided in Section 66-8-101.1 NMSA 1978;

I. driving while under the influence of intoxicating liquor or drugs, as provided in Section 66-8-102 NMSA 1978;

J. refusal to submit to chemical tests, as provided in Section 66-8-111 NMSA 1978;

K. reckless driving, as provided in Section 66-8-113 NMSA 1978;

L. careless driving, as provided in Section 66-8-114 NMSA 1978;

M. racing on highways, as provided in Section 66-8-115 NMSA 1978;

N. using a mobile communication device while driving a motor vehicle, unless the driver holds a valid amateur radio operator license issued by the federal communications commission and is operating an amateur radio. As used in this subsection:

(1) "driving" means being in actual physical control of a motor vehicle on a highway or street, except that "driving" does not include being lawfully parked; and

(2) "mobile communication device" means a wireless communication device that is designed to receive and transmit voice, text or image communication; or

O. buying, attempting to buy, receiving, possessing or permitting oneself to be served alcoholic beverages, as provided in Subsection C of Section 60-7B-1 NMSA 1978.

**History:** Laws 1999, ch. 175, § 1; 2011, ch. 143, § 1.

**ANNOTATIONS**

**The 2011 amendment,** effective June 17, 2011, added "child not in restraint device or seat belt", "failure to properly fasten safety belt", "using a mobile communication device while driving" and "buying, possessing or being served alcoholic beverages" to the list of traffic violations.

## 66-5-1.2. 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.

**History:** Laws 2003, ch. 164, § 4.

**ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 164, § 11 made the section effective July 1, 2003.

## 66-5-2. Drivers must be licensed.

A. Except those expressly exempted from the Motor Vehicle Code, no person shall drive any motor vehicle, neighborhood electric car or moped upon a highway in this state unless the person:

(1) holds a valid license issued under the provisions of the Motor Vehicle Code; and

(2) has surrendered to the division any other license previously issued to the person by this state or by another state or country or has filed an affidavit with the division that the person does not possess such other license; however, the applicant need not surrender a motorcycle license duly obtained under Paragraph (4) of Subsection A of Section 66-5-5 NMSA 1978.

B. Any person licensed under the provisions of the Motor Vehicle Code or expressly exempted from licensure may exercise the privilege granted upon all streets and highways in this state and shall not be required to obtain any other license to exercise the privilege by any county, municipality or any other local body having authority to adopt local police regulations.

C. A person charged with violating the provisions of this section shall not be convicted if the person produces, in court, a driver's license issued to the person that was valid at the time of the person's arrest.

**History:** 1953 Comp., § 64-5-2, enacted by Laws 1978, ch. 35, § 224; 1981, ch. 361, § 20; 1989, ch. 318, § 13; 2007, ch. 319, § 44; 2013, ch. 204, § 3.

## ANNOTATIONS

**Cross references.** — For drivers of off-highway motorcycles not being required to be licensed, *see* 66-3-1010 NMSA 1978.

For operator of motorized bicycle having valid driver's license in his possession, *see* 66-3-1101 NMSA 1978.

**The 2013 amendment,** effective July 1, 2013, provided that a person cited for no driver's license shall not be convicted if the person produces evidence of compliance in court; in Paragraph (2) of Subsection A, after "duly obtained under Paragraph", changed "(3)" to "(4)"; and added Subsection C.

**The 2007 amendment,** effective June 15, 2007, prohibited a person from driving a neighborhood electric car on a highway unless the person complies with the conditions of this section.

**The 1989 amendment,** effective July 1, 1989, inserted "or moped" and substituted "this state" for "the state" in the introductory paragraph of Subsection A.

**Absence of chauffeur's license unimportant unless truck driver must possess.** — Permitting plaintiff in wrongful death action to show that driver did not have a chauffeur's license and submitting to jury question as to whether truck was being operated in violation of law was erroneous in absence of evidence that driver was member of a class of whom such license was required. *Downer v. Southern Union Gas Co.*, 1949-NMSC-045, 53 N.M. 354, 208 P.2d 815.

**Illegal sentence.** — Sentence of 364 days for driving without a valid driver's license was illegal and void. *State v. Ingram*, 1998-NMCA-177, 126 N.M. 426, 970 P.2d 1151, cert. denied, 126 N.M. 533, 972 P.2d 352.

I**nsufficient evidence of driving without a license.** — Where child appealed a jury verdict that he committed the delinquent act of driving without a valid driver's license, there was insufficient evidence to support the jury's finding that child committed the delinquent act where the State failed to prove that child did not hold a valid driver's license at the time of driving, and the evidence at trial established only that child did not have a license in his possession at the time of driving. *State v. Anthony L.*, 2019-NMCA-003, cert. denied.

**Failure to possess license not ground for involuntary manslaughter conviction.** — Failure of accused to have a driver's license was not ground for convicting him of involuntary manslaughter in death of his passenger where absence of license was not causally related to death. *State v. Seward*, 1942-NMSC-002, 46 N.M. 84, 121 P.2d 145.

**Person is not permitted to operate motor vehicle on basis of documents** in his or her possession which could, upon performance of a ministerial function by a government official, lead to the issuance of a license. 1980 Op. Att'y Gen. No. 80-21.

**Person applying for license must surrender nonresident license.** — Under the provisions of Section 64-13-38, 1953 Comp. (similar to this section) and Section 66-5-49 NMSA 1978, a person possessing a valid nonresident operator's or chauffeur's license must surrender it upon applying for a New Mexico operator's or chauffeur's license, or file an affidavit with the department of motor vehicles (now motor vehicle division) that he does not possess an operator's or chauffeur's license. 1964 Op. Att'y Gen. No. 64-145.

**Operator of small electrically driven vehicle must obtain operator's license.** — The operator of a three horsepower, electrically driven vehicle suitable for transportation of persons upon the highways of the state must obtain a motor vehicle operator's license. 1959 Op. Att'y Gen. No. 59-36.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 96 to 111.

State's liability to one injured by improperly licensed driver, 41 A.L.R.4th 111.

Negligent entrustment of motor vehicle to unlicensed driver, 55 A.L.R.4th 1100.

Automobiles: Necessity or emergency as defense in prosecution for driving without operator's license or while license is suspended, 7 A.L.R.5th 73.

60 C.J.S. Motor Vehicles §§ 146 to 152.

## 66-5-2.1. Consent to registration with the selective service system; applicability.

A. Every male citizen of the state of New Mexico and every other male person residing in the state of New Mexico who, on the day or days fixed for the first or any subsequent Selective Service Act registration, is between the ages of eighteen and twenty-six shall consent to his registration in compliance with the requirements of the federal Military Selective Service Act, 50 U.S.C. App. 453 et seq., when applying to receive or renew a driver's license or identification card.

B. The division shall forward in an electronic format the necessary personal information required for registration of the applicants identified in Subsection A of this section to the selective service system. The applicant's submission of the application shall serve as an indication that the applicant has already registered with the selective service or that he is authorizing the division to forward to the selective service the necessary information for registration. The division shall notify the applicant on the

application that his submission of the application will serve as his consent to be registered with the selective service system if he is required to do so by federal law.

C. The provisions of this section shall apply to every male citizen of the state of New Mexico and every other male person residing in the state of New Mexico who, on the day or days fixed for the first or any subsequent Selective Service Act registration, is between the ages of eighteen and twenty-six who are applying for issuance, renewal or duplication of an instruction permit, a driver's license, a provisional driver's license, a commercial driver's license or an identification card on or after the effective date of this act.

D. The provisions of this section shall not be applicable to any alien lawfully admitted to the United States as a nonimmigrant under Section 101(a)(15) of the Immigration and Nationality Act, as amended (66 Stat. 163; 8 U.S.C. 1101), for so long as he continues to maintain a lawful nonimmigrant status in the United States.

**History:** Laws 2003, ch. 425, § 1.

**ANNOTATIONS**

**Cross references.** — For the Selective Service Act, *see* 50 U.S.C. § 451 et seq.

**Effective dates.** — Laws 2003, ch. 425, § 2 made the section effective July 1, 2003.

## 66-5-3. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1993, ch. 68, § 57 repealed 66-5-3 NMSA 1978, as enacted by Laws 1978, ch. 35, § 225 relating to exceptions for motorcycle driver education, effective June 18, 1993. For provisions of former section, *see* the 1992 NMSA 1978 on *NMOneSource.com.*

## 66-5-4. Persons exempt from licensure.

The following persons are exempt from licensure under the Motor Vehicle Code [66-1-1 NMSA 1978]:

A. military personnel while driving a motor vehicle owned or leased by the United States department of defense;

B. a person who is at least fifteen years of age and who has in immediate possession a valid driver's license issued to the person in the person's home state or country may drive a motor vehicle in this state, except that the person shall obtain a license upon becoming a resident and before the person is employed for compensation by another for the purpose of driving a motor vehicle;

C. a nonresident who is at least eighteen years of age whose home state or country does not require the licensing of drivers may drive a motor vehicle for a period of not more than one hundred eighty days in any calendar year if the motor vehicle driven is duly registered in the home state or country of the nonresident;

D. a driver of a farm tractor or implement of husbandry temporarily drawn, moved or propelled on the highway; and

E. a driver of an off-highway motorcycle.

**History:** 1953 Comp., § 64-5-4, enacted by Laws 1978, ch. 35, § 226; 1989, ch. 318, § 14; 2005, ch. 124, § 2; 2007, ch. 321, § 3.

## ANNOTATIONS

**Cross references.** — For driver's licenses of members of the armed forces on active duty, *see* 66-5-21.1 NMSA 1978.

**The 2007 amendment,** effective April 2, 2007, eliminated the exemption of an employee of the United States while driving a motor vehicle owned or leased to the United States and added an exemption from licensure military personnel while driving a motor vehicle owned or leased by the United States department of defense.

**The 2005 amendment,** effective June 17, 2005, deleted former Subsection F which provided that a person who is in the military service or who has been honorably discharged is exempt from licensure under certain specified conditions.

**The 1989 amendment,** effective July 1, 1989, added present Subsection E, and redesignated former Subsection E as present Subsection F, while substituting therein "six" for "four" in Paragraph (1) and "this state" for "the state" in Paragraph (2).

**New resident can be required to obtain New Mexico license.** — The department of motor vehicles (now motor vehicle division) can require a person who has become a resident of this state to acquire a New Mexico operator's license regardless of how long or short a period he has been in the state. A person who has become a resident of New Mexico and has in his possession an operator's license issued to him by another state no longer falls within the exemption in Subsection B, of Section 64-13-38, 1953 Comp. (similar to this section), that is, carrying a valid driver's license from his home state. 1966 Op. Att'y Gen. No. 66-22.

**Licensed nonresident drivers are not required to apply** for New Mexico operator's license. 1959 Op. Att'y Gen. No. 59-48.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 104.

60 C.J.S. Motor Vehicles § 150.

## 66-5-5. Persons not to be licensed.

The division shall not issue a driver's license under the Motor Vehicle Code to any person:

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

(1) an instruction permit to a person fifteen years of age or older who is enrolled in and attending or has completed a driver education course approved by the bureau that includes a DWI education and prevention component;

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

(a) who has completed a driver education course approved by the bureau or offered by a public school that includes a DWI education and prevention component and has had an instruction permit for at least six months as provided in Section 66-5-8 NMSA 1978; and

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

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

(a) who has had a provisional license for at least a twelve-month period immediately preceding the date of the application for the driver's license as provided in Section 66-5-9 NMSA 1978;

(b) who has complied with restrictions on that license; and

(c) who has not been adjudicated for an offense involving the use of alcohol or drugs during the twelve-month period immediately preceding the application for the driver's license and who has no pending adjudications alleging an offense involving the use of alcohol or drugs at the time of application; and

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

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

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

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

B. whose license or driving privilege has been suspended or denied, during the period of suspension or denial, or to any person whose license has been revoked, except as provided in Section 66-5-32 NMSA 1978 and the Ignition Interlock Licensing Act [66-5-501 to 66-5-504 NMSA 1978];

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

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

E. who was convicted on or after June 17, 2005 of driving a motor vehicle while under the influence of intoxicating liquor or drugs pursuant to the laws or ordinances of any other state or any governmental subdivision thereof, unless the person obtains an ignition interlock license as provided in the Ignition Interlock Licensing Act for a period of one year for a first conviction; a period of two years for a second conviction; a period of three years for a third conviction; or the remainder of the offender's life for a fourth or subsequent conviction, subject to a five-year review as provided in Subsection D of this section. Upon presentation of proof satisfactory to the division, the division may credit time spent by a person operating a motor vehicle with an ignition interlock or comparable device, as a condition of the person's sentence for a conviction in another jurisdiction, against the ignition interlock time requirements imposed by this subsection. The division shall promulgate rules necessary for granting credit to persons who participate in comparable out-of-state programs following a conviction for driving a motor vehicle while under the influence of intoxicating liquor or drugs. The requirements of this subsection shall not apply to a person who:

(1) has only one conviction for driving a motor vehicle while under the influence of intoxicating liquor or drugs that did not result in great bodily harm or death, and that conviction is pursuant to the laws or ordinances of any other state or any governmental subdivision thereof and who presents proof satisfactory to the division

that the person completed all conditions of the person's sentence for the conviction in the other jurisdiction, whether or not installation of an ignition interlock device was a condition of the sentence; provided, however, that at least twelve months have passed since the person's conviction; or

(2) applies for a driver's license ten years or more from the date of the person's last conviction, except for a person who is subject to lifetime driver's license revocation for a conviction in another jurisdiction pursuant to this subsection;

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

G. who is required by the Motor Vehicle Code to take an examination, unless the person has successfully passed the examination;

H. who is required under the laws of this state to deposit proof of financial responsibility and who has not deposited the proof;

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

J. as a motorcycle driver who is less than eighteen years of age and who has not presented a certificate or other evidence of having successfully completed a motorcycle driver education program licensed or offered in conformance with rules of the bureau.

**History:** 1953 Comp., § 64-5-5, enacted by Laws 1978, ch. 35, § 227; 1979, ch. 329, § 1; 1981, ch. 361, § 21; 1984, ch. 72, § 1; 1989, ch. 329, § 4; 1993, ch. 68, § 39; 1999, ch. 175, § 2; 2003, ch. 239, § 7; 2005, ch. 241, § 1; 2005, ch. 269, § 1; 2007, ch. 316, § 1; 2007, ch. 317, § 1; 2011, ch. 143, § 2; 2017, ch. 17, § 1; 2017, ch. 79, § 1.

## ANNOTATIONS

**Cross references.** — For general definitions applicable to this section, *see* 66-1-4 to 66-1-4.20 NMSA 1978.

For financial responsibility, *see* 66-5-201 NMSA 1978 et seq.

**2017 Multiple Amendments.** — Laws 2017, ch. 17, § 1 and Laws 2017, ch. 79, § 1, both effective July 1, 2017, enacted different amendments to this section. Pursuant to 12-1-8 NMSA 1978, Laws 2017, ch. 79, § 1, as the last act signed by the governor, has been compiled into the NMSA 1978 as set out above, and Laws 2017, ch. 17, § 1, while not compiled pursuant to 12-1-8 NMSA 1978, is set out below.

The nature of the difference between the amendments is that Laws 2017, ch. 17, § 1, amended the ignition interlock licensing requirement to provide that a person with only one prior conviction for driving under the influence of intoxicating liquor or drugs in another jurisdiction may obtain a New Mexico driver’s license upon proof of completion of all conditions of the person’s sentence in the other jurisdiction, and Laws 2017, ch. 79, § 1, amended the ignition interlock licensing requirement to provide that a person with only one prior conviction for driving under the influence of intoxicating liquor or drugs in another jurisdiction that did not result in great bodily harm or death, and at least twelve months have passed since the person’s conviction, may obtain a New Mexico driver’s license upon proof of completion of all conditions of the person’s sentence, removed the District of Columbia from the provision governing conviction in other states, and made technical changes.

Laws 2017, ch. 79, § 1 [set out above], effective July 1, 2017, amended the ignition interlock licensing requirement to provide that a person with only one prior conviction for driving under the influence of intoxicating liquor or drugs in another jurisdiction that did not result in great bodily harm or death, and at least twelve months have passed since the person’s conviction, may obtain a New Mexico driver’s license upon proof of completion of all conditions of the person’s sentence, removed the District of Columbia from the provision governing conviction in other states, and made certain technical changes; in Subsection E, in the introductory paragraph, after "any other state", deleted "the District of Columbia", after "conviction in another jurisdiction", deleted "pursuant to this section", and after "The requirements of this subsection shall not apply to a person who", added Paragraph E(1) and designated the remainder of the section as Paragraph E(2).

Laws 2017, ch. 17, § 1 [set out below], effective July 1, 2017, amended the ignition interlock licensing requirement to provide that a person with only one prior conviction for driving under the influence of intoxicating liquor or drugs in another jurisdiction may obtain a New Mexico driver’s license upon proof of completion of all conditions of the person’s sentence in the other jurisdiction; in Subsection E, after "conviction in another jurisdiction", deleted "pursuant to this subsection", and added Paragraph E(1) and designated the remainder of the section as Paragraph E(2), and provided:

"66-5-5. Persons not to be licensed.

The division shall not issue a driver's license under the Motor Vehicle Code to any person:

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

(1) an instruction permit to a person fifteen years of age or older who is enrolled in and attending or has completed a driver education course approved by the bureau that includes a DWI education and prevention component;

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

(a) who has completed a driver education course approved by the bureau or offered by a public school that includes a DWI education and prevention component and has had an instruction permit for at least six months as provided in Section 66-5-8 NMSA 1978; and

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

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

(a) who has had a provisional license for at least a twelve-month period immediately preceding the date of the application for the driver's license as provided in Section 66-5-9 NMSA 1978;

(b) who has complied with restrictions on that license; and

(c) who has not been adjudicated for an offense involving the use of alcohol or drugs during the twelve-month period immediately preceding the application for the driver's license and who has no pending adjudications alleging an offense involving the use of alcohol or drugs at the time of application; and

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

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

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

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

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

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

D. who is four or more times convicted of driving a motor vehicle while under the influence of intoxicating liquor or narcotic drug regardless of whether the convictions are under the laws or ordinances of this state or any municipality or county of this state or under the laws or ordinances of any other state, the District of Columbia or any

governmental subdivision thereof, except as provided in the Ignition Interlock Licensing Act. Five years from the date of the fourth conviction and every five years thereafter, the person may apply to any district court of this state for restoration of the license, and the court, upon good cause being shown, may order restoration of the license applied for; provided that the person has not been subsequently convicted of driving a motor vehicle while under the influence of intoxicating liquor or drugs. Upon issuance of the order of restoration, a certified copy shall immediately be forwarded to the division, and if the person is otherwise qualified for the license applied for, the four previous convictions shall not prohibit issuance of the license;

E. who was convicted on or after June 17, 2005 of driving a motor vehicle while under the influence of intoxicating liquor or drugs pursuant to the laws or ordinances of any other state, the District of Columbia or any governmental subdivision thereof, unless the person obtains an ignition interlock license as provided in the Ignition Interlock Licensing Act for a period of one year for a first conviction; a period of two years for a second conviction; a period of three years for a third conviction; or the remainder of the offender's life for a fourth or subsequent conviction, subject to a five-year review as provided in Subsection D of this section. Upon presentation of proof satisfactory to the division, the division may credit time spent by a person operating a motor vehicle with an ignition interlock or comparable device, as a condition of the person's sentence for a conviction in another jurisdiction, against the ignition interlock time requirements imposed by this subsection. The division shall promulgate rules necessary for granting credit to persons who participate in comparable out-of-state programs following a conviction for driving a motor vehicle while under the influence of intoxicating liquor or drugs. The requirements of this subsection shall not apply to a person who:

(1) has only one conviction for driving a motor vehicle while under the influence of intoxicating liquor or drugs and that conviction is pursuant to the laws or ordinances of any other state or any governmental subdivision thereof and who presents proof satisfactory to the division that the person completed all conditions of the person's sentence for the conviction in the other jurisdiction, whether or not installation of an ignition interlock device was a condition of the sentence; or

(2) applies for a driver's license ten years or more from the date of the person's last conviction, except for a person who is subject to lifetime driver's license revocation for a conviction in another jurisdiction pursuant to this subsection;

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

G. who is required by the Motor Vehicle Code to take an examination, unless the person has successfully passed the examination;

H. who is required under the laws of this state to deposit proof of financial responsibility and who has not deposited the proof;

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

J. as a motorcycle driver who is less than eighteen years of age and who has not presented a certificate or other evidence of having successfully completed a motorcycle driver education program licensed or offered in conformance with rules of the bureau.

**The 2011 amendment,** effective June 17, 2011, in Subsection A, eliminated the restriction on the issuance of driver's licenses to persons who have been convicted of a traffic violation that was committed within the ninety-day period prior to applying for the license and authorized the issuance of a driver's license to a person who has not been convicted of an offense involving alcohol or drugs during the twelve-month period preceding the application for the license.

**The 2007 amendment,** effective July 1, 2007, added Subsection E prohibiting the issuance of a license to a person convicted after June 17, 2005 in another state or the District of Columbia of driving while under the influence.

**The 2005 amendment,** effective June 17, 2005, in Subsection C, deleted the former provision that a license shall not be issued to an habitual drunkard and provided that a license shall not be issued to a person who is an habitual user of alcohol; in Subsection D, provided that a license shall not be issued to a person who is four or more times convicted of driving under the influence; that five years from the date of the fourth conviction and every five years thereafter, the person may apply for restoration of the license; deleted the former qualification that a license may be restored if the person has not been convicted in the ten-year period prior to his request for restoration of the license; provided that when the license is restored, the prior four conviction shall not prohibit the issuance of a license; and deleted the former provision that if the person is subsequently once convicted of driving under the influence his license may be revoked for five years. This section was also amended by Laws 2005, ch. 241, § 1. The section is set out as amended by Laws 2005, ch. 269, § 1. *See* 12-1-8 NMSA 1978.

**The 2003 amendment,** effective April 6, 2003, substituted "rule" for "regulation" in Subparagraph A(4)(c) and Subsection I; added "and the Ignition Interlock Licensing Act" at the end of Subsection B; and inserted "except as provided in the Ignition Interlock Licensing Act" at the end of the first sentence in Subsection D.

**The 1999 amendment,** effective January 1, 2000, in Subsection A substituted "eighteen years" for "sixteen years" in the introductory language, in Paragraph (1) substituted the language beginning "an instruction" and ending "fifteen" for "a restricted instruction permit or a restricted license to students fourteen" and inserted "or has completed", substituted Paragraph (2) for former Paragraph (2), relating to granting a license to a

person fifteen years or older who has completed a driver education course, and added Paragraph (3) and redesignated the subsequent paragraph accordingly.

**The 1993 amendment,** effective July 1, 1994, substituted "a driver's" for "any driver's" in the introductory paragraph; substituted the language beginning "and attending a driver-education course" for "high school driver-education programs approved by the state board of education" at the end of Paragraph (1) of Subsection A; substituted the language beginning "a driver-education course" for "an accredited driver-education program" at the end of Paragraph (2) of Subsection A; substituted "within any ten-year period" for "subsequent to July 1, 1955" in the first sentence of Subsection D; substituted "Ten years" for "Five years" at the beginning and "ten-year period" for "five-year period" near the end of the second sentence in Subsection D; and substituted the language beginning "or offered" for "by or offered by a school in conformance with regulations of the state department of education" at the end of Subsection I.

**The 1989 amendment,** effective July 1, 1989, in Subsection B, substituted "whose license or driving privilege has been suspended or denied, during the period of suspension or denial" for "whose license has been suspended, during the suspension".

**Revocation based on number of convictions.** — A"first offense" designation appearing in a plea agreement and in a metropolitan court's judgment and sentence did not preclude MVD from revoking a driver's license, because the application of Section 66-5-5D NMSA 1978 depends upon the number of convictions, rather than their sequence or status, and because no intent to preserve the driver's driving privileges was evinced by the relevant documents. *Armijo v. State Taxation & Revenue Dep't*, 2002-NMCA-065, 132 N.M. 398, 49 P.3d 77, cert. quashed, 131 N.M. 564, 40 P.3d 1008.

**Restoration of license upon a showing of good cause.** — At a minimum, a petitioner for license restoration would need to establish that he or she does not have a habitual alcohol problem and has not received any subsequent DWI convictions so that he or she was not barred from restoration under Subsection C or D. Beyond this minimal showing, in order to present evidence of good cause, a petitioner must also demonstrate that he or she no longer presents a threat to public safety if given an unrestricted license. *DeMichele v. N.M. Taxation & Revenue Dep't*, 2015-NMCA-095.

Where petitioner, between 1990 and 2007, had been convicted six times of DWI and had an interlock device placed on his vehicle after his last DWI conviction, and where it was uncontested that petitioner had been sober for eight and one-half years and had not had a single interlock violation during that time period, the district court's determination that petitioner failed to demonstrate good cause for restoration of his license based on refusals to retest and readings on the interlock device showing the presence of alcohol at above zero but below .025, neither of which were reportable violations, was an abuse of discretion. The uncontested evidence, including the lack of violations over an eight and one-half year period, does not permit a reasonable

inference that petitioner still posed a threat to public safety. *DeMichele v. N.M. Taxation & Revenue Dep't*, 2015-NMCA-095.

**Denial of license restoration may not be based solely on the number of prior DWIs or deterrent effect of interlock devices.** — Where petitioner, between 1990 and 2007, had been convicted six times of DWI and had an interlock device placed on his vehicle after his last DWI conviction, and where it was uncontested that petitioner had been sober for eight and one-half years and had not had a single interlock violation during that time period, and where petitioner made a showing that he no longer posed a threat to public safety, the district court abused its discretion in denying the petition for restoration based on the number of prior DWIs held by the petitioner and because interlock devices generally work as a deterrent to drinking and driving. *DeMichele v. N.M. Taxation & Revenue Dep't*, 2015-NMCA-095.

**When an applicant, formerly disabled under this provision, is cured,** the division may in its discretion, upon proper medical representation as to the cure of the disability, issue a license. 1957 Op. Att'y Gen. No. 57-265.

**Discretion may be exercised by local representative.** — Issuing a permit or license to the groups and for the purposes covered by Section 64-13-40A(1), (2), 1953 Comp. (similar to this section), is a discretionary and not a mandatory matter with the division. The discretion to be exercised in issuing or refusing to issue a license or permit to these groups may be exercised by the local representative of the division. 1955 Op. Att'y Gen. No. 55-6255.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 109 to 111.

State's liability to one injured by improperly licensed driver, 41 A.L.R.4th 111.

60 C.J.S. Motor Vehicles §§ 154, 155.

## 66-5-6. Repealed.

**History:** 1953 Comp., § 64-5-6, enacted by Laws 1978, ch. 35, § 228; 1989, ch. 318, § 15; 1995, ch. 135, § 16; 1995, ch. 136, § 1; 2004, ch. 59, § 10; 1978 Comp., § 66-5-6, repealed by Laws 2023, ch. 69, § 2.

**ANNOTATIONS**

**Repeals.** — Laws 2023, ch. 69, § 2 repealed 66-5-6 NMSA 1978, as enacted by 1978, ch. 35, § 228, relating to health standards advisory board, effective June 16, 2023. For provisions of former section, *see* the 2022 NMSA 1978 on *NMOneSource.com*.

## 66-5-7. Driver's license; classification; examinations.

A. The division, upon issuing a driver's license, shall indicate on the license the type or general class of vehicles the licensee may drive. The division shall establish such qualifications, after public hearings, as it deems reasonably necessary for the safe operation of various types, sizes or combinations of vehicles and shall appropriately examine each applicant to determine his qualifications according to the type or general class of license for which he has applied.

B. The division, in issuing the driver's license for certain types or general classes of vehicles, may waive any on-the-road examination for applicants except as provided in Section 66-5-6 NMSA 1978 [repealed]. The division may certify certain employers, governmental agencies or other appropriate organizations to train and test all applicants for the type or general class of licenses if the training and testing meet the standards established by the director.

**History:** 1953 Comp., § 64-5-7, enacted by Laws 1978, ch. 35, § 229; 1995, ch. 136, § 2.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Laws 2023, ch. 69, § 2 repealed 66-5-6 NMSA 1978, effective June 16, 2023.

**The 1995 amendment,** effective June 16, 1995, substituted "on the license" for "thereon" in the first sentence in Subsection A; in Subsection B, added at the end of the first sentence "except as provided in Section 66-5-6 NMSA 1978", deleted "of the division" at the end of the subsection, and made minor stylistic changes throughout the subsection.

**When chauffeur's license not required** — An employee whose principal employment is not driving and who does only incidental and limited driving in the course of a working day would not be required to have a chauffeur's license. 1956 Op. Att'y Gen. No. 56-6512.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 111.

60 C.J.S. Motor Vehicles § 156.

## 66-5-8. Provisional licenses; instruction permits; driver education students; temporary licenses.

A. A person fifteen years and six months of age or older may apply to the division for a provisional license if the person:

(1) has completed a driver education course approved by the bureau that includes a DWI prevention and education component;

(2) has had an instruction permit for at least six months; provided that thirty days shall be added to the six months for each adjudication or conviction of a traffic violation committed during the time the person was driving with an instruction permit;

(3) has not been cited for a traffic violation that is pending at the time of application; and

(4) has successfully completed a practice driving component.

B. Successful completion of a practice driving component shall include not less than fifty hours of actual driving by the applicant, including not less than ten hours of night driving. An applicant for a provisional license who cannot drive at night due to low nighttime vision may be exempted from the night driving requirement of this subsection; provided that the applicant submits to the division an ophthalmologic or optometric report from a licensed ophthalmologist or optometrist who attests to the applicant's visual condition and its effect on the applicant's driving ability. The applicant's parent or guardian shall certify that the applicant has completed the practice driving component.

C. When operating a motor vehicle, a provisional licensee may be accompanied by not more than one passenger under the age of twenty-one who is not a member of the licensee's immediate family. A provisional license entitles the licensee, while having the license in the licensee's immediate possession, to operate a motor vehicle upon the public highways between the hours of 5:00 a.m. and midnight unless the provisional licensee is eligible for a license restricting driving to daylight hours. A provisional licensee may drive at any hour unless otherwise restricted as provided in this subsection if:

(1) accompanied by a licensed driver who is twenty-one years of age or older;

(2) required by family necessity as evidenced by a signed statement of a parent or guardian;

(3) required by medical necessity as evidenced by a signed statement from medical personnel;

(4) driving to and from work as evidenced by a signed statement from the licensee's employer;

(5) driving to and from school or a religious activity as evidenced by a signed statement of a school or religious official or a parent or guardian; or

(6) required due to a medical emergency.

D. A provisional license shall be in such form as to be readily distinguishable from an unrestricted driver's license and shall contain an indication that the licensee may drive without supervision.

E. A person fifteen years of age or older who is enrolled in and attending or has completed a driver education course approved by the bureau that includes a DWI prevention and education component may apply to the division for an instruction permit. The division, in its discretion after the applicant has successfully passed all parts of the examination other than the driving test, may issue to the applicant an instruction permit. This permit entitles the applicant, while having the permit in the applicant's immediate possession, to drive a motor vehicle upon the public highways when accompanied by a licensed driver who is twenty-one years of age or older, who has been licensed for at least three years in this state or in another state and who is occupying a seat beside the driver except in the event the permittee is operating a motorcycle.

F. A person fifteen years of age or older who is a student enrolled in and attending a driver education course that is approved by the bureau and that includes both a DWI education and prevention component and practice driving component may drive a motor vehicle on the highways of this state even though the person has not reached the legal age to be eligible for a driver's license or a provisional license. In completing the practice driving component, a person may only operate a motor vehicle on a public highway if:

(1) an approved instructor is occupying a seat beside the person; or

(2) a licensed driver who is twenty-one years of age or older and who has been licensed for at least three years in this state or another state is occupying a seat beside the person.

G. The division in its discretion may issue a temporary driver's permit to an applicant for a driver's license permitting the applicant to operate a motor vehicle while the division is completing its investigation and determination of all facts relative to the applicant's right to receive a driver's license. The permit shall be in the applicant's immediate possession while operating a motor vehicle, and it shall be invalid when the applicant's license has been issued or for good cause has been refused.

H. A holder of an instruction permit for a motorcycle shall not carry any other passenger while operating a motorcycle.

**History:** 1953 Comp., § 64-5-8, enacted by Laws 1978, ch. 35, § 230; 1981, ch. 361, § 22; 1993, ch. 68, § 40; 1999, ch. 175, § 3; 2005, ch. 29, § 1; 2011, ch. 143, § 3.

## ANNOTATIONS

**Cross references.** — For driver training schools, *see* 66-10-1 NMSA 1978 et seq.

For approved driver education courses, *see* 22-13-12 NMSA 1978.

**The 2011 amendment,** effective June 17, 2011, in Subsection A, required that thirty days be added to the six-month period of an instruction permit for each traffic violation committed during the period the licensee was driving with an instruction permit; prohibited the issuance of a provisional license to a person who has a pending traffic citation at the time of application; and eliminated the restriction on the issuance of provisional licenses to persons who have been convicted of a traffic violation that was committed within the ninety-day period prior to applying for the license.

**The 2005 amendment,** effective June 17, 2005, provided that an applicant for a provisional license who cannot drive at night due to low nighttime vision, may be exempted from the night driving requirement if the applicant submits a report from a licensed ophthalmologist or optometrist who attests to the applicants visual condition.

**The 1999 amendment,** effective January 1, 2000, added "Provisional licenses" and "Driver education students" in the section heading; added Subsections A through C, deleted former Subsection B, relating to restricted licenses, and redesignated the subsequent subsections accordingly; in Subsection D inserted "or has completed" in the first sentence, inserted the language beginning "twenty-one" and ending "state and" in the last sentence, and deleted the former last sentence, relating to the renewal of an instructional permit; rewrote Subsection E, and added Paragraph (2) therein; and made minor stylistic changes.

**The 1993 amendment,** effective July 1, 1994, inserted "who is enrolled in and attending a driver education course that includes a DWI prevention and education program approved by the bureau or offered by a public school" in the first sentence of Subsection A; inserted "and attending a driver education course that is approved by the bureau or offered by a public school that includes both a DWI education and prevention component and practice driving" in the first sentence of Subsection B; and made minor stylistic changes throughout the section.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 108.

Liability, for personal injury or property damage, for negligence in teaching or supervision of learning driver, 5 A.L.R.3d 271.

60 C.J.S. Motor Vehicles § 153.

## 66-5-9. Application for license or renewal.

A. An application for a license or a renewal of a license shall be made upon a form furnished by the department. An application shall be accompanied by the proper fee. For licenses other than those issued pursuant to the New Mexico Commercial Driver's License Act, submission of a complete application with payment of the fee entitles the

applicant to not more than three attempts to pass the examination within a period of six months from the date of application.

B. An application for a REAL ID-compliant driver's license, an instruction permit or provisional license, or renewal of a REAL ID-compliant driver's license, instruction permit or provisional license shall contain the applicant's full legal name; date of birth; sex; and current New Mexico residence address and shall briefly describe the applicant and indicate whether the applicant has previously been licensed as a driver and, if so, when and by what state or country and whether any such license has ever been suspended or revoked or whether an application has ever been refused and, if so, the date of and reason for the suspension, revocation or refusal.

C. An application for a standard driver's license or a renewal of a standard driver's license shall contain the applicant's full name; date of birth; sex; and New Mexico residence address of the applicant and briefly describe the applicant and indicate whether the applicant has previously been licensed as a driver and, if so, when and by what state or country and whether any such license has ever been suspended or revoked or whether an application has ever been refused and, if so, the date of and reason for the suspension, revocation or refusal.

D. A valid license shall satisfy the department's identity, age and New Mexico residency requirements for the issuance or renewal of a standard driver's license to an applicant.

E. The secretary shall establish by regulation documents that may be accepted as evidence of the residency of the applicant. A person applying for or renewing a REAL ID-compliant driver's license shall provide documentation required by the federal government of the applicant's identity; date of birth; social security number, if applicable; address of current residence; and lawful status. For an applicant for a REAL ID-compliant driver's license or a renewal of a REAL ID-compliant driver's license, the department shall verify the applicant's lawful status and social security number, if applicable, through a method approved by the federal government.

F. Pursuant to the federal REAL ID Act of 2005, the secretary shall establish a written, defined exception process to allow a person to demonstrate the person's identity, age and lawful status. The process shall allow a person to use a certified letter of enrollment or a valid identification card issued by a federally recognized Indian nation, tribe or pueblo to demonstrate the person's identity or age or to demonstrate the person's lawful status, if applicable.

G. A person with lawful status may apply for a REAL ID-compliant driver's license or a standard driver's license.

H. An applicant shall indicate whether the applicant is applying for a REAL ID-compliant driver's license or a standard driver's license. The department shall issue a standard driver's license to an applicant who is otherwise eligible for a REAL ID-

compliant driver's license but who does not provide proof of lawful status and who affirmatively acknowledges that the applicant understands that a standard driver's license may not be valid for federal purposes. An applicant who does not provide proof of lawful status shall only apply for a standard driver's license. Except as otherwise provided in the Motor Vehicle Code, the department shall treat driving authorization cards and standard driver's licenses as REAL ID-compliant driver's licenses.

I. An application by a foreign national with lawful status for a REAL ID-compliant driver's license shall contain the unique identifying number and expiration date, if applicable, of the foreign national's valid passport, valid visa, employment authorization card issued under the applicant's approved deferred action status or other arrival-departure record or document issued by the federal government that conveys lawful status. The department may issue to an eligible foreign national applicant a REAL ID-compliant driver's license that is valid for a period not to exceed the duration of the applicant's lawful status; provided that if that date cannot be determined by the department and the applicant is not a legal permanent resident, the license shall expire one year after the effective date of the license.

J. An application for a standard driver's license shall include proof of the applicant's identity and age.

K. An applicant shall indicate whether the applicant has been convicted of driving while under the influence of intoxicating liquor or drugs in this state or in any other jurisdiction. Failure to disclose any such conviction prevents the issuance of a license for a period of one year if the failure to disclose is discovered by the department prior to issuance. If the nondisclosure is discovered by the department subsequent to issuance, the department shall revoke the license for a period of one year. Intentional and willful failure to disclose, as required in this subsection, is a misdemeanor.

L. An applicant under eighteen years of age who is making an application for a first New Mexico driver's license shall submit evidence that the applicant has:

(1) successfully completed a driver education course approved by the bureau that included a DWI prevention and education component. The bureau may accept verification of driver education course completion from another state if the driver education course substantially meets the requirements of the bureau for a course offered in New Mexico;

(2) had a provisional license for at least the twelve-month period immediately preceding the date of the application for the driver's license; provided that thirty days shall be added to the twelve-month period for each adjudication or conviction of a traffic violation committed during the time the person was driving with a provisional license;

(3) complied with restrictions on that license;

(4) not been cited for a traffic violation that is pending at the time of application; and

(5) not been adjudicated for an offense involving the use of alcohol or drugs during the twelve-month period immediately preceding the date of the application for the driver's license and that there are no pending adjudications alleging an offense involving the use of alcohol or drugs at the time of application.

M. An applicant eighteen years of age or over, but under twenty-five years of age, who is making an application to be granted a first New Mexico driver's license shall submit evidence with the application that the applicant has successfully completed a bureau-approved DWI prevention and education program.

N. An applicant twenty-five years of age or over who has been convicted of driving under the influence of intoxicating liquor or drugs and who is making an application to be granted a first New Mexico driver's license shall submit evidence with the application that the applicant has successfully completed a bureau-approved DWI prevention and education program.

O. Whenever an application is received from a person previously licensed in another jurisdiction, the department may request a copy of the driver's record from the other jurisdiction. When received, the driver's record may become a part of the driver's record in this state with the same effect as though entered on the driver's record in this state in the original instance.

P. Whenever the department receives a request for a driver's record from another licensing jurisdiction, the record shall be forwarded without charge.

Q. This section does not apply to licenses issued pursuant to the New Mexico Commercial Driver's License Act.

**History:** 1953 Comp., § 64-5-9, enacted by Laws 1978, ch. 35, § 231; 1979, ch. 71, § 2; 1991, ch. 160, § 11; 1993, ch. 68, § 41; 1995, ch. 45, § 1; 1999, ch. 175, § 4; 2002, ch. 3, § 1; 2003, ch. 31, § 1; 2011, ch. 143, § 4; 2016, ch. 79, § 3; 2019, ch. 167, § 6.

## ANNOTATIONS

**Cross references.** — For duration and fees for licenses and permits, *see* 66-5-44 NMSA 1978.

For requirement that applicants for their initial license must produce evidence of their age, *see* 66-5-47 NMSA 1978.

**The 2019 amendment,** effective October 1, 2019, renamed driver's licenses and driving authorization cards; deleted "driving authorization card" and added "standard driver's license", and added "REAL ID-compliant" throughout the section; in the section heading,

deleted "temporary license, provisional license, instruction permit or driving authorization card"; in Subsection A, after "application for", deleted "an instruction permit, provisional license, driver's", after "renewal of", deleted "an instruction permit, provisional license, driver's", after "For", deleted "permits, provisional licenses, driver's"; in Subsection B, added "for a REAL ID-compliant driver's license, an instruction permit or provisional license, or renewal of a REAL ID-compliant driver's license, instruction permit or provisional license"; added new Subsections C and D, and redesignated former Subsections C through N as Subsections F through Q, respectively; in Subsection H, after "the department", deleted "may" and added "shall"; in Subsection J, deleted Paragraphs (1) through (5); and in Subsection K, after "issuance of a", deleted "driver's", after the next occurrence of "license", deleted "driving authorization card, provisional license, temporary license or instruction permit", after "shall revoke the", deleted "driver's", and after the next occurrence of "license", deleted "driving authorization card, provisional license, temporary license or instruction permit".

**The 2016 amendment,** effective May 18, 2016, provided for two tiers of driving documents, and created driver's licenses and identification cards that meet the requirements of the federal Real ID Act of 2005; in the catchline, after "provisional license", deleted "or", and after "permit", added "or driving authorization card or renewal"; in Subsection A, after "provisional license", deleted "or", after "driver's license", added "or driving authorization card or a renewal of an instruction permit, provisional license, driver's license or driving authorization card", after "provisional licenses", deleted "or", and after "driver's licenses", added "or driving authorization cards"; in Subsection B, after "shall contain the", deleted "full name, social security number or individual tax identification number" and added "applicant's full legal name", after "sex; and", added "current", after "New Mexico residence address", deleted "of the applicant", after "and", added "shall", after "revocation or refusal", deleted "For foreign nationals applying for driver's licenses, the secretary shall accept the individual taxpayer identification number as a substitute for a social security number regardless of immigration status.", after "The secretary", deleted "is authorized to" and added "shall", after "establish by regulation", deleted "other", after "documents that may be accepted as", deleted "a substitute for a social security number or an individual tax identification number" and added the remainder of the subsection; added new Subsections C through G and redesignated former Subsections C through I as Subsections H through N, respectively; in Subsection H, after "the issuance of a driver's license", added "driving authorization card", and after "shall revoke the driver's license", added "driving authorization card"; in Subsection I, in the introductory sentence, after "New Mexico driver's license", added "or driving authorization card", in Paragraph (2), after "application for the driver's license", added "or driving authorization card", in Paragraph (5), after "application for the driver's license", added "or driving authorization card"; in Subsections J and K, after "New Mexico driver's license", added "or driving authorization card"; and in Subsection N, after "does not apply to", deleted "driver's".

**The 2011 amendment,** effective June 17, 2011, in Subsection D, required that thirty days be added to the twelve-month period of a provisional license for each traffic violation committed during the period the licensee was driving with a provisional license;

and eliminated the restriction on the issuance of a driver's license to a person who has been convicted of a traffic violation that was committed within the ninety-day period prior to applying for the license.

**The 2003 amendment,** effective June 20, 2003, substituted "An" for "Every" seven times throughout the section; in Subsection B, inserted "or individual tax identification number" following "social security number" near the beginning, inserted "For foreign nationals applying for driver's licenses the secretary shall accept the individual taxpayer identification number as a substitute for a social security number regardless of immigration status." near the end, and added "or an individual tax identification number" at the end.

**The 2002 amendment,** effective May 15, 2002, added the last sentence in Subsection B; and in Paragraph D(6) deleted "that period" following "during" and added "the twelve-month period immediately preceding the date of the application for the driver's license".

**The 1999 amendment,** effective January 1, 2000, inserted "provisional license" in the section heading and throughout the section; in Subsection D added the Paragraph (1) designation and added Paragraphs (2) to (6); substituted "twenty-five" for "forty-five" in Subsections E and F; deleted "who has not been previously licensed in other jurisdictions for a cumulative total of more than ten years or" following "and over" in Subsection F; and made minor stylistic changes.

**The 1995 amendment,** effective July 1, 1995, inserted "but less than forty-five years of age" in Subsection E; added Subsection F; redesignated former Subsections F through H as Subsections G through I; and made a minor stylistic change.

**The 1993 amendment,** effective July 1, 1994, added current Subsections D and E and redesignated former Subsections D through F as Subsections F to H.

**The 1991 amendment,** effective July 1, 1991, substituted "department" for "division" in Subsections A, D and E; in Subsection A, divided the former second sentence into two sentences and rewrote the provision which read "Every application shall be accompanied by a proper fee and payment of such fee shall entitle the applicant to not more than three attempts to pass the examination within a period of six months from the date of application"; inserted "social security number" in Subsection B; in Subsection C, divided the former second sentence into two sentences and rewrote the provision which read "Failure to disclose any such conviction shall make the issuance or continued possession of a driver's license, temporary license or instruction permit for a period of one year prohibited"; added Subsection F; and made minor stylistic changes throughout the section.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 99.

60 C.J.S. Motor Vehicles § 156(1).

## 66-5-10. Application for license; information; transfer to license.

A. Within the forms prescribed by the department for applications and licenses of drivers of motor vehicles, a space shall be provided to show whether the applicant is a donor as provided in the Jonathan Spradling Revised Uniform Anatomical Gift Act [Chapter 24, Article 6B NMSA 1978]. Anyone applying for a license may, if the applicant desires, indicate the applicant's donor status on the space provided on the application, and this information, if given by an applicant, shall be shown upon the license issued. The form and driver's license shall be signed by the donor in the presence of a witness who shall also sign the form in the donor's presence. The department shall, as soon as practicable, include the following donor statement on the application form:

"I,_____, hereby make
(Name of applicant/donor)
an anatomical gift effective upon my death. A medical evaluation at the time of my death shall determine the organs and tissues suitable for donation.

_____
(Signature of donor)

_____
(Signature of parent or guardian is required if the donor is under fifteen years of age.)".

B. The department shall mark the donor status on each person's driver's license record and shall retain each application form or its image of a person who wishes to be a donor. The department shall create and maintain a statewide donor registry and shall provide on-line computer terminal access to the donor registry to organ procurement organizations and procurement organizations, as defined in the Jonathan Spradling Revised Uniform Anatomical Gift Act. Authorized hospital or organ and tissue donor program personnel, immediately prior to or after a donor's death, may request verification of the donor's status from the department and may obtain a copy of the application from the department.

**History:** 1953 Comp., § 64-5-10, enacted by Laws 1978, ch. 35, § 232; 1987, ch. 69, § 5; 1995, ch. 135, § 17; 2002, ch. 42, § 4; 2007, ch. 323, § 32.

**ANNOTATIONS**

**The 2007 amendment,** effective July 1, 2007, changed the name of the act.

**The 2002 amendment,** effective May 15, 2002, added the last sentence and form in Subsection A.

**The 1995 amendment,** effective June 16, 1995, in Subsection A, deleted "and driver's license" following "sign the form", rewrote Subsection B, and, throughout the section, substituted "department" for "division" and made minor stylistic changes.

## 66-5-11. Application of minors.

A. The application of any person under the age of eighteen years for an instruction permit, provisional license or driver's license shall be signed and verified by the father, mother or guardian or, in the event there is no parent or guardian, by another responsible adult who is willing to assume the obligation imposed under this article upon a person signing the application of a minor.

B. The application of a minor who is in the custody of the state may be signed and verified by a grandparent; a sibling over the age of eighteen years; an aunt; an uncle; a foster parent with whom the minor resides; or as authorized by the secretary of children, youth and families, a child protective services worker or juvenile probation officer; provided that the child protective services worker or juvenile probation officer first notifies a foster parent or other responsible party of the intent to sign.

C. Any negligence or willful misconduct of a minor under the age of eighteen years when driving a motor vehicle upon a highway shall be imputed to the person who has signed the application of the minor for a permit or license, which person shall be jointly and severally liable with the minor for damages caused by the negligence or willful misconduct except as otherwise provided in Subsection D of this section.

D. In the event a minor deposits or there is deposited upon the minor's behalf proof of financial responsibility in respect to the operation of a motor vehicle owned by the minor or, if not the owner of a motor vehicle, with respect to the operation of any motor vehicle, in form and in amounts as required under the motor vehicle financial responsibility laws of this state, the division may accept the application of the minor when signed by one parent or the guardian of the minor, and, while such proof is maintained, the parent or guardian is not subject to the liability imposed under Subsection C of this section. Liability shall not be imposed under this section or under the Mandatory Financial Responsibility Act [66-5-201 to 66-5-239 NMSA 1978] on the state or the secretary of children, youth and families or on a juvenile probation officer or child protective services worker for damages caused by the negligence or willful misconduct of a minor driver whose application for an instruction permit, provisional license or driver's license was signed by the child protective services worker or juvenile probation officer with the authorization of the children, youth and families department while the minor was in the custody of the state.

**History:** 1953 Comp., § 64-5-11, enacted by Laws 1978, ch. 35, § 233; 1999, ch. 175, § 5; 2009, ch. 239, § 69.

**ANNOTATIONS**

**Cross references.** — For financial responsibility, *see* 66-5-201 NMSA 1978 et seq.

**The 2009 amendment,** effective July 1, 2009, added Subsection B and in Subsection D, added the last sentence.

**Applicability.** — Laws 2009, ch. 239, § 71, provided that the provisions of this act apply to all children who, on July 1, 2009, are on release or are otherwise eligible to be placed on release as if the Juvenile Public Safety Advisory Board Act had been in effect at the time they were placed on release or became eligible to be released.

**The 1999 amendment,** effective January 1, 2000, inserted "provisional license" in Subsection A, and made minor stylistic changes.

**Compiler's notes.** — The "guest act" or "guest statute", Sections 64-24-1 and 64-24-2, 1953 Comp., was declared unconstitutional, as imposing an unreasonable and arbitrary classification, in *McGeehan v. Bunch*, 1975-NMSC-055, 88 N.M. 308, 540 P.2d 238. As a result the cases dealing with the "guest statute", annotated below, should be read in light of the unconstitutionality of the statute.

**Purpose of verified signature of parent on minor's application** for a driver's license is to obtain assurance of the responsibility required by the statute. *Rutledge v. Johnson*, 1970-NMSC-023, 81 N.M. 217, 465 P.2d 274.

**Indicated by provision minor may make deposits.** — Section 64-13-44, 1953 Comp. (similar to this section), was designed as a means of providing financial responsibility for the minor and liability on the part of the minor would be requisite to the imposition of a liability upon the signers. *Hately v. Hamilton*, 1970-NMCA-092, 81 N.M. 774, 473 P.2d 913, cert. denied, 81 N.M. 773, 473 P.2d 912.

**Fact that duplicate license did not contain verified signature immaterial.** — Where personal injury action was brought against minor driver and father for minor driver's negligence, fact that duplicate license, obtained after loss of original, did not contain father's verified signature, but rather the notation "parents permission by phone," did not preclude imputation of minor's negligence to father under this section, since father had not attempted to revoke or disclaim his original signature, nor did he seek relief from his responsibility by requesting cancellation of minor's license. *Rutledge v. Johnson*, 1970-NMSC-023, 81 N.M. 217, 465 P.2d 274.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 636.

Validity, construction, and application of age requirements for licensing of motor vehicle operators, 86 A.L.R.3d 475.

Construction and effect of statutes which make parent, custodian, or other person signing minor's application for vehicle operator's license liable for licensee's negligence or willful misconduct, 45 A.L.R.4th 87.

60 C.J.S. Motor Vehicles §§ 110, 155, 156; 60A C.J.S. Motor Vehicles § 445.

## 66-5-12. Release from liability.

Any person who has signed the application of a minor for an instruction permit, a driver's license or provisional license may thereafter file with the division a verified written request that the license of the minor so granted be canceled. Thereupon, the division shall cancel the license of the minor, and the person who signed the application of the minor shall be relieved from the liability imposed under this article, by reason of having signed the application, on account of any subsequent negligence or willful misconduct of the minor in operating a motor vehicle.

**History:** 1953 Comp., § 64-5-12, enacted by Laws 1978, ch. 35, § 234; 1999, ch. 175, § 6.

**ANNOTATIONS**

**The 1999 amendment,** effective January 1, 2000, in the first sentence inserted "an instruction permit", inserted "driver's" and inserted "or provisional license", and made minor stylistic changes.

## 66-5-13. Cancellation of license upon death of person signing minor's application.

The division upon receipt of satisfactory evidence of the death of the person who signed the application of a minor for an instruction permit, a driver's license or provisional license shall cancel the license and shall not issue a new license until such time as a new application, duly signed and verified, is made as required by this article. This provision does not apply in the event the minor has attained the age of eighteen years.

**History:** 1953 Comp., § 64-5-13, enacted by Laws 1978, ch. 35, § 235; 1999, ch. 175, § 7.

**ANNOTATIONS**

**The 1999 amendment,** effective January 1, 2000, in the first sentence inserted "an instruction permit", "driver's", and "or provisional license" and made minor stylistic changes.

## 66-5-14. Examination of applicants.

A. The department shall examine every first-time applicant for a driver's license or a motorcycle endorsement and may examine other applicants for a driver's license or motorcycle endorsement. The examination shall include a test of the applicant's ability to read and understand highway signs regulating, warning and directing traffic, the applicant's knowledge of the traffic laws of this state and an actual demonstration of ability to exercise ordinary and reasonable control in the operation of a motor vehicle except as provided in Section 66-5-7 NMSA 1978 and any further physical and mental examination as the department finds necessary to determine the applicant's fitness to operate a motor vehicle or motorcycle safely upon the highways.

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

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

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

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

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

**History:** 1953 Comp., § 64-5-14, enacted by Laws 1978, ch. 35, § 236; 1995, ch. 135, § 18; 2010, ch. 42, § 1; 2010, ch. 70, § 1.

## ANNOTATIONS

**The 2010 amendment,** effective July 1, 2010, in Subsection B, after "driver’s license or motorcycle endorsement", added the remainder of the sentence.

Laws 2010, ch. 42, § 1 enacted identical amendments to this section. The section was set out as amended by Laws 2010, ch. 70, § 1. *See* 12-1-8 NMSA 1978.

**The 1995 amendment,** effective June 16, 1995, added Subsections B through D; designated the existing language as Subsection A; and in Subsection A, substituted "department" for "division" in two places, inserted "first-time" preceding "applicant" and added the language beginning "and may" in the first sentence, updated the code reference in the second sentence; and made minor stylistic changes throughout the section.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 111.

60 C.J.S. Motor Vehicles § 156(1).

## 66-5-15. Licenses issued to applicants.

A. The department shall, upon payment of the required fee, issue to every qualified applicant a license as applied for. Except as provided in Subsection B of this section, the license shall bear the applicant's full legal name; date of birth; sex; current New Mexico residence address; full-face or front-view digital photograph; a unique license number; a date of issuance; an expiration date; a brief description of the licensee; the signature of the licensee; and the licensee's organ donor status. A license shall not be valid unless it bears the signature of the licensee.

B. A standard driver's license shall bear the applicant's full name; date of birth; sex; current New Mexico residence address; full-face or front-view digital photograph; a unique license number; a date of issuance; an expiration date; a brief description of the licensee; the signature of the licensee; and the licensee's organ donor status.

C. The department shall ensure that REAL ID-compliant driver's licenses and standard driver's licenses are distinguishable in color or design but only to the extent that a standard driver's license shall bear the statement: "NOT INTENDED FOR FEDERAL PURPOSES" and a REAL ID-compliant driver's license shall include a gold star pursuant to Section 66-5-15.3 NMSA 1978.

D. A REAL ID-compliant driver's license issued to a foreign national who fails to prove that the foreign national's lawful status will not expire prior to the date on which the license applied for would expire but for the person being a foreign national shall clearly indicate on its face and in the machine readable zone that it is temporary and shall bear the word "TEMPORARY".

**History:** 1953 Comp., § 64-5-15, enacted by Laws 1978, ch. 35, § 237; 1991, ch. 160, § 12; 2004, ch. 59, § 11; 2016, ch. 79, § 4; 2019, ch. 167, § 7.

**ANNOTATIONS**

**Cross references.** — For provision that an applicant may have his donor status, as provided in the Jonathan Spradling Revised Uniform Anatomical Gift Act, shown on the license, see 66-5-10 NMSA 1978.

For requirement that the division photograph the driver, see 66-5-47 NMSA 1978.

**The 2019 amendment,** effective October 1, 2019, provided for REAL ID-compliant licenses, and provided additional requirements for a standard driver's license; in Subsection A, added "Except as provided in Subsection B of this section", and added "and the licensee's organ donor status"; added a new Subsection B and redesignated former Subsection B and C as Subsections C and D, respectively; in Subsection C, after "shall ensure that", added "REAL ID-compliant", after "driver's licenses and", deleted "driving authorization card" and added "standard driver's licenses", and after "color or design", added "but only to the extent that a standard driver's license shall bear the statement: 'NOT INTENDED FOR FEDERAL PURPOSES' and a REAL ID-compliant driver's license shall include a gold star pursuant to Section 66-5-15.3 NMSA 1978"; in Subsection D, added "REAL ID-compliant"; and deleted former Subsection D**.**

**The 2016 amendment,** effective May 18, 2016, required the taxation and revenue department to ensure that driver’s licenses and driving authorization cards are distinguishable in color, that driving authorization cards clearly state "not for federal purposes", and that driver’s licenses issued to certain foreign nationals bear the word "temporary"; added the subsection designation "A", in Subsection A, after "every qualified applicant a", deleted "driver’s", after "shall bear the", added "applicant’s", after "full", added "legal", after "birth", added "sex", after "current New Mexico", deleted "physical or mailing" and added "residence", after "address", deleted "a", after "front-view", added "digital", and after "photograph", deleted "of the license holder and" and added "a unique license number; a date of issuance; an expiration date"; and added new Subsections B, C and D.

**The 2004 amendment,** effective March 4, 2004, changed "residence" to "physical or mailing" address and added "a full face or front-view photograph of the license holder".

**The 1991 amendment,** effective July 1, 1991, in the first sentence, substituted "department" for "division", substituted "qualified applicant" for "applicant qualifying therefor" and deleted "thereon a distinguishing number" following "license shall bear".

**REAL ID Act requirements.** — The REAL ID Act, Pub. L. 109-13, Div. B, Title II, §§ 201 to 207, May 11, 2005 (8 U.S.C. § 1101 et. seq.), does not, on its face, dictate that states must adopt the REAL ID Act’s licensing standards. 2008 Op. Att'y Gen. No. 08-07.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 99.

60 C.J.S. Motor Vehicles § 146.

## 66-5-15.1. Notification by licensee.

Every licensee shall, as a condition of holding a driver's license, agree to notify the director of any change in his physical or mental condition that would impair the licensee's ability to operate a vehicle.

**History:** 1978 Comp., § 66-5-15.1, enacted by Laws 1989, ch. 318, § 16.

## 66-5-15.2. Repealed.

**History:** Laws 2016, ch. 79, § 15; repealed by Laws 2019, ch. 167, § 17.

**ANNOTATIONS**

**Repeals.** — Laws 2019, ch. 167, § 17 repealed 66-5-15.2 NMSA 1978, as enacted by Laws 2016, ch. 79, § 15, relating to photograph, fingerprints, effective October 1, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

## 66-5-15.3. Issuance of documents that meet federal requirements to be accepted by federal agencies for official federal purposes; reimbursement.

A. No later than six months from the effective date of this 2016 act, the department shall establish and begin to issue to qualified applicants licenses and identification cards that meet federal requirements to be accepted by federal agencies for official federal purposes. The department shall adopt the general design marking known as gold star pursuant to the *Department of Homeland Security REAL ID Security Plan Guidance Handbook* to implement the provisions of this subsection.

B. Provided that a person whose license or identification card expires on or after July 1, 2020 provides the required documentation and qualifies for the license or identification card issued pursuant to Subsection A of this section, the person may:

(1) exchange that person's valid New Mexico-issued license or identification card for a license or identification card issued pursuant to Subsection A of this section with an identical expiration date at no cost; or

(2) apply for a new license or identification card issued pursuant to Subsection A of this section.

C. The secretary shall adopt rules providing for the proration of a:

(1) refund for the remaining period that a person's license or identification card would have been valid; or

(2) credit for the remaining period that a person's license or identification card would have been valid toward the cost of a new license or identification card.

**History:** Laws 2016, ch. 79, § 16.

**ANNOTATIONS**

**Effective dates.** — Laws 2016, ch. 79 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 18, 2016, 90 days after the adjournment of the legislature.

## 66-5-15.4. Driver's licenses and identification cards; acceptance.

A. A standard driver's license or identification card shall be accepted by every state and local public agency and every public accommodation for all of the purposes for which such public agency or public accommodation would accept a REAL ID-compliant driver's license or identification card.

B. It is unlawful for a public accommodation to refuse to accept a standard driver's license or identification card for any purpose for which it would accept a REAL ID-compliant driver's license or identification card. A person harmed by a violation of this subsection may maintain an action for damages or appropriate injunctive or declaratory relief to redress the violation in a district court of the judicial district in which the violation occurred or in which the plaintiff or defendant resides or the defendant may be found.

C. As used in this section, "public accommodation" means any establishment that provides or offers its services, facilities, accommodations or goods to the public, but does not mean a bona fide private club or other place or establishment that is by its nature and use distinctly private.

**History:** Laws 2019, ch. 167, § 14.

**ANNOTATIONS**

**Effective dates.** — Laws 2019, ch. 167, § 18 made Laws 2019, ch. 167 effective October 1, 2019.

## 66-5-15.5. Repealed.

**History:** Laws 2019, ch. 167, § 15; repealed by Laws 2019, ch. 167, § 16.

**ANNOTATIONS**

**Repeals.** — Laws 2019, ch. 167, § 16 repealed 66-5-15.5 NMSA 1978, as enacted by Laws 2019, ch. 167, § 15, relating to validity, driving authorization cards, effective July 1, 2022. For provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

## 66-5-16. License to be carried and exhibited on demand.

Every licensee shall have the licensee's driver's license in the licensee's immediate possession at all times when operating a motor vehicle and shall display the license upon demand of a magistrate, a peace officer or a field deputy or inspector of the division. A person who violates the provisions of this section is guilty of a penalty assessment misdemeanor; however, a person charged with violating this section shall not be convicted if the person produces in court a driver's license issued to the person and valid at the time of the person's citation.

**History:** 1953 Comp., § 64-5-16, enacted by Laws 1978, ch. 35, § 238; 1985, ch. 186, § 1; 2018, ch. 74, § 35.

**ANNOTATIONS**

**Cross references.** — For requirement that evidence of vehicle registration be exhibited on demand, *see* 66-3-13 NMSA 1978.

**The 2018 amendment,** effective July 1, 2018, provided a penalty for a violation of the provisions of this section, and made technical changes; and added "A person who violates the provisions of this section is guilt of a penalty assessment misdemeanor;".

**Constitutionality.** — Under Sections 66-2-12A(3), 66-3-13, and 66-5-16 NMSA 1978, a law enforcement officer is permitted to ask for a driver's license, registration, and proof of insurance once an officer stops an automobile for safety reasons. Those statutes are consistent with the constitutional protections against unreasonable searches and seizures afforded by the Fourth Amendment of the United States Constitution and N.M. Const., art. II, § 10. *State v. Reynolds*, 1995-NMSC-008, 119 N.M. 383, 890 P.2d 1315.

**Section does not authorize random detention based on hunches.** — Sections 64-3-11 and 64-13-49, 1953 Comp. (similar to 66-3-13 NMSA 1978 and this section respectively), grant the police the unquestioned good faith right to detain motor vehicles for the purpose specified, but when the detention becomes an excuse for some other purpose which would not be lawful, the actions then become unreasonable. The statutes do not nor cannot authorize a random selection of motorists based on a "hunch" or a "guesstimate" that some law has been broken, as such would violate minimum federal constitutional standards. *State v. Ruud*, 1977-NMCA-072, 90 N.M. 647, 567 P.2d 496.

**Random and routine check not unconstitutional.** — There is no violation of constitutional standards where a state police officer in New Mexico stops the driver of a

motor vehicle for the purpose of making a routine check of driver's license and vehicle registration on a random, or arbitrary basis, i.e., the officer having no reasonable suspicion that any law had been broken. *United States v. Jenkins*, 528 F.2d 713 (10th Cir. 1975), *overruled by State v. Ruud*, 90 N.M. 647, 567 P.2d 496 (Ct. App. 1977).

**What constitutes a search.** — Individuals have no legitimate subjective expectation of privacy in their license, registration, or insurance documents when they are operating a motor vehicle. Consequently, it is not a "search" to request those documents. *State v. Reynolds*, 1995-NMSC-008, 119 N.M. 383, 890 P.2d 1315.

**Demanding proof of registration and display of license lawful.** — Demanding proof of registration of the vehicle and the displayment of the driver's license were a lawful and necessary carrying out of the New Mexico statutes regulating motor vehicles and were not violative of minimum federal constitutional standards. *United States v. Lepinski*, 460 F.2d 234 (10th Cir. 1972), *overruled by State v. Ruud*, 1977-NMCA-072, 90 N.M. 647, 567 P.2d 496.

In conducting general license and registration checks under Sections 64-3-11 and 64-13-49, 1953 Comp. (similar to Section 66-3-13 NMSA 1978 and this section respectively), the actions of the police must be in conformity with the constitutional requirements of the U.S. Const., amend. 4; and when the detention permitted by the statute becomes a mere subterfuge or excuse for some other purpose which would not be lawful the actions then become unreasonable and fail to meet the constitutional requirement. *State v. Bloom*, 1976-NMCA-035, 90 N.M. 226, 561 P.2d 925, *rev'd*, 1977-NMSC-016, 90 N.M. 192, 561 P.2d 465.

**Person is not permitted to operate motor vehicle on basis of documents** in his or her possession which could, upon performance of a ministerial function by a government official, lead to the issuance of a license. 1980 Op. Att'y Gen. No. 80-21.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 101, 147.

Validity and construction of statute making it a criminal offense for the operator of a motor vehicle not to carry or display his operator's license or the vehicle registration certificate, 6 A.L.R.3d 506.

60 C.J.S. Motor Vehicles § 157; 61A C.J.S. Motor Vehicles § 651.

## 66-5-17. Use of license for identification.

In any criminal prosecution, civil action or administrative proceeding charging violation of a statute, ordinance or regulation concerning the sale, consumption or possession of alcoholic beverages involving minors, proof that the person charged, in good faith, demanded and was shown a valid driver's license shall be valid defense to such prosecution, civil action or administrative proceeding.

**History:** 1953 Comp., § 64-5-17, enacted by Laws 1978, ch. 35, § 239.

## 66-5-18. Altered, forged or fictitious license; penalty.

A. A person who uses or possesses an altered, forged or fictitious driver's license, permit or identification card is guilty of a misdemeanor.

B. A person who alters or forges a driver's license, permit or identification card or who makes a fictitious driver's license, permit or identification card is guilty of a fourth degree felony.

C. A person who possesses or uses a fraudulent, counterfeit or forged document to apply for or renew a driver's license, permit or identification card is guilty of a fourth degree felony.

**History:** 1953 Comp., § 64-5-18, enacted by Laws 1978, ch. 35, § 240; 2004, ch. 59, § 12.

**ANNOTATIONS**

**Cross references.** — For display or possession of cancelled or false license being a misdemeanor, *see* 66-5-37 NMSA 1978.

For the penalty for a misdemeanor under the Motor Vehicle Code, *see* 66-8-7 NMSA 1978.

For the penalty for a Motor Vehicle Code felony, *see* 66-8-9 NMSA 1978.

For the penalty for a fourth-degree felony, *see* 31-18-15 NMSA 1978.

**The 2004 amendment,** effective March 4, 2004, amended Subsection A to add "or identification card" and added Subsection C.

**Possession of false driver's license is forbidden** because it is illegal or illicit and comes within the definition of "contraband." *State v. James*, 1978-NMCA-046, 91 N.M. 690, 579 P.2d 1257, cert. denied, 91 N.M. 751, 580 P.2d 972.

## 66-5-19. Restricted licenses.

A. The division, upon issuing a license, may, whenever good cause appears, impose restrictions, including the shortening of the licensure period suitable to the licensee's driving ability with respect to the type of or special mechanical control devices required on a motor vehicle that the licensee may operate or such other restrictions applicable to the licensee as the division determines to be appropriate to ensure the safe operation of a motor vehicle by the licensee.

B. At age seventy-nine and thereafter, the applicant shall renew the applicant's license on a yearly basis at no cost to the applicant.

C. The division may either issue a special restricted license or may set forth such restrictions upon the usual license form.

D. The division may issue a restricted license or a restricted provisional license for driving during daylight hours only to some visually impaired persons who fail the usual eyesight test. The division shall evaluate the extent of the visual impairment and the impairment's effect on the driving ability of the applicant and the director may issue a restricted license under the following conditions:

(1) the applicant has no record of moving violations;

(2) the necessity of the license is shown to the satisfaction of the director; and

(3) the applicant satisfies the provisions of Section 66-5-206 NMSA 1978 relating to proof of financial responsibility.

E. The division may seek the advice of experts necessary to advise the division on physical and mental criteria and vision standards relating to the licensing of drivers pursuant to the Motor Vehicle Code.

F. The division, having cause to believe that a licensed driver or applicant may not be physically, visually or mentally qualified to be licensed, may request a written report on a form prescribed by the division from a health care provider of the driver's or applicant's choice for consideration after the licensed driver or applicant has again undergone an on-the-road examination and any physical, visual or mental tests required by the division. These examinations and tests shall not be waived by the division.

G. Reports received by the division for the purpose of assisting the division in determining whether a person is qualified to be licensed are confidential and shall be used only by the division and shall not be divulged to any person or used as evidence in a trial.

H. The division may, upon receiving satisfactory evidence of any violation of the restrictions of the license, suspend the license, but the licensee is entitled to a hearing as upon a suspension under Sections 66-5-1.1 through 66-5-47 NMSA 1978 and as provided in the Administrative Hearings Office Act [7-1B-1 to 7-1B-9 NMSA 1978].

I. It is a misdemeanor for any person to operate a motor vehicle in any manner in violation of the restrictions imposed in a restricted license issued to the person.

**History:** 1953 Comp., § 64-5-19, enacted by Laws 1978, ch. 35, § 241; 2005, ch. 29, § 2; 2007, ch. 319, § 45; 2015, ch. 73, § 30; 2016, ch. 79, § 5; 2023, ch. 69, § 1.

## ANNOTATIONS

**Cross references.** — For the penalty for a misdemeanor, *see* 66-8-7 NMSA 1978.

**The 2023 amendment,** effective June 16, 2023, authorized the motor vehicle division to request reports from health care providers for the purpose of assisting the division in addressing restricted licenses, and removed a reference to a repealed section of law; in Subsection D, in the introductory clause, deleted "health standards advisory board created pursuant to the provisions of Section 66-5-6 NMSA 1978" and added "division", and after "ability of the applicant and", deleted "based on the board's recommendations"; and added new Subsections E through G and redesignated former Subsections E and F as Subsections H and I, respectively.

**The 2016 amendment,** effective May 18, 2016, increased the age from seventy-five years to seventy-nine years at which applicants for driver's licenses must renew annually; in Subsection A, after "upon issuing a", deleted "driver's license or a provisional"; and in Subsection B, after "At age", deleted "seventy-five" and added "seventy-nine".

**The 2015 amendment,** effective July 1, 2015, entitled a licensee whose license has been suspended the right to a hearing pursuant to the Administrative Hearings Office Act; in Subsection A, after "provisional license,", deleted "has authority" and added "may", and after "good cause appears,", deleted "to"; in Subsection D, after "visual impairment and", deleted "its" and added "the impairment's", and after "based on", deleted "its" and added "the board's"; in Subsection E, after "under Sections", deleted "66-5-1" and added "66-5-1.1", and after "NMSA 1978", added "and as provided in the Administrative Hearings Office Act".

**The 2007 amendment,** effective June 15, 2007, changed "handicapped" to "impaired" and "handicap" to "impairment".

**The 2005 amendment,** effective June 17, 2005, provided that the motor vehicle division may impose restrictions on a provisional license.

**Restricted license may be issued in place of suspended license.** — Under Section 64-13-50, 1953 Comp. (similar to this section), having suspended a license, there is authority to issue a restricted license in its stead, imposing on the licensee such restrictions as determined to be necessary to assure the safe operation of a motor vehicle. 1960 Op. Att'y Gen. No. 60-194.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 100.

Denial, suspension, or cancellation of driver's license because of physical disease or defect, 38 A.L.R.3d 452.

Necessity of notice and hearing before revocation or suspension of motor vehicle driver's license, 60 A.L.R.3d 361.

Sufficiency of notice and hearing before revocation or suspension of motor vehicle driver's license, 60 A.L.R.3d 427.

60 C.J.S. Motor Vehicles § 159.

## 66-5-20. Replacement licenses.

In the event that a permit or driver's license issued under the provisions of this article is lost, stolen, mutilated or destroyed, or in the event of a name or address change, the person to whom the permit or driver's license was issued may, upon payment of the required fee, obtain a replacement upon furnishing proof of age and identity satisfactory to the department. A person who loses a permit or driver's license and who, after obtaining a replacement, finds the original, shall immediately surrender the original to the department.

**History:** 1953 Comp., § 64-5-20, enacted by Laws 1978, ch. 35, § 242; 1999, ch. 76, § 1.

**ANNOTATIONS**

**Cross references.** — For the duplicate license and permit fee, *see* 66-5-44 NMSA 1978.

**The 1999 amendment,** effective July 1, 1999, substituted "Replacement" for "Duplicate" in the section heading; in the first sentence, substituted "replacement" for "duplicate or substitute thereof", inserted "of age and identity", and substituted "department" for "division"; added the second sentence; and made minor stylistic changes.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 60 C.J.S. Motor Vehicles § 156(2).

## 66-5-21. Expiration of license; limited issuance period; four-year issuance period; eight-year issuance period; renewal.

A. Except as provided in Subsections B through H of this section and Sections 66-5-19 and 66-5-67 NMSA 1978, all licenses shall be issued for a period of four years, and each license shall expire four years after the effective date of the license or shall expire thirty days after the applicant's seventy-ninth birthday. A license issued pursuant to Section 66-5-19 NMSA 1978 shall expire thirty days after the applicant's birthday in the year in which the license expires. Each license is renewable within ninety days prior to its expiration or at an earlier date approved by the department. The fee for the license shall be as provided in Section 66-5-44 NMSA 1978. The department may provide for renewal by mail or telephonic or electronic means of a license issued pursuant to the provisions of this subsection, pursuant to regulations adopted by the department that

ensure adequate security measures to safeguard personal information that is obtained in the issuance of a license, except the department shall not renew by mail or telephonic or electronic means a license if prohibited by federal law. The department may require an examination upon renewal of the license.

B. Except as provided in Subsection E of this section, at the option of an applicant, a REAL ID-compliant driver's license may be issued for a period of eight years, provided that the applicant:

(1) pays the amount required for a REAL ID-compliant driver's license issued for a term of eight years;

(2) otherwise qualifies for a four-year REAL ID-compliant driver's license; and

(3) will not reach the age of seventy-nine during the last four years of the eight-year REAL ID-compliant driver's license period or reach the age of twenty-one during any year within the term of the license.

C. A REAL ID-compliant driver's license issued pursuant to the provisions of Subsection B of this section shall expire eight years after the effective date of the license.

D. A license issued prior to an applicant's twenty-first birthday shall expire thirty days after the applicant's twenty-first birthday. A license issued prior to an applicant's twenty-first birthday may be issued for a period of up to five years.

E. A REAL ID-compliant driver's license issued to a foreign national shall expire on the earliest of:

(1) thirty days after the applicant's twenty-first birthday, if issued prior to the applicant's twenty-first birthday;

(2) thirty days after the applicant's seventy-ninth birthday;

(3) four years after the effective date of the license or eight years after the effective date of the license if the applicant opted for a period of eight years pursuant to Subsection B of this section; or

(4) the expiration date of the applicant's lawful status; provided that if that date cannot be determined by the department and the applicant is not a legal permanent resident, the REAL ID-compliant driver's license shall expire one year after the effective date of the license.

F. A standard driver's license issued to an applicant shall expire on the earliest of:

(1) thirty days after the applicant's twenty-first birthday, if issued prior to the applicant's twenty-first birthday;

(2) thirty days after the applicant's seventy-ninth birthday; or

(3) four years after the effective date of the license.

G. At the option of an applicant, a standard driver's license may be issued for a period of eight years; provided that the applicant:

(1) pays the amount required for a standard driver's license issued for a term of eight years;

(2) otherwise qualifies for a four-year standard driver's license; and

(3) will not reach the age of seventy-nine during the last four years of the eight-year standard driver's license period or reach the age of twenty-one during any year within the term of the license.

H. The secretary shall adopt regulations providing for the proration of driver's license fees due to shortened licensure periods permitted pursuant to Subsection A of Section 66-5-19 NMSA 1978 and for licensure periods authorized pursuant to the provisions of this section.

**History:** 1953 Comp., § 64-5-21, enacted by Laws 1978, ch. 35, § 243; 1981, ch. 360, § 1; 1985, ch. 66, § 1; 1992, ch. 13, § 1; 1995, ch. 107, § 1; 1997, ch. 26, § 1; 1999, ch. 222, § 1; 2004, ch. 59, § 13; 2010, ch. 42, § 2; 2010, ch. 70, § 2; 2016, ch. 79, § 6; 2019, ch. 167, § 8.

## ANNOTATIONS

**The 2019 amendment,** effective October 1, 2019, provided for REAL ID-compliant licenses, revised the four-year issuance period for licenses, and provided for an eight-year issuance period for standard driver's licenses; in Subsection A, after "Subsections B through", deleted "I" and added "H", and after "shall expire", deleted "thirty days after the applicant's birthday in the fourth year" and added "four years"; in Subsection B, in the introductory clause, added "Except as provided in Subsection E of this section", in Paragraph B(1), after "required for a", added "REAL ID-compliant", in Paragraph B(2), after "four-year", added "REAL ID-compliant", and in Paragraph A(3), after "eight-year", added "REAL ID-compliant"; in Subsection C, added "REAL ID-compliant"; in Subsection E, in the introductory clause, added "REAL ID-compliant", in Paragraph E(3), deleted "thirty days after the applicant's birthday in the fourth year" and added "four years", and in Paragraph E(4), after "resident, the", added "REAL ID-compliant"; in Subsection F, in the introductory clause, after "A", deleted "driving authorization card" and added "standard driver's license", and after "applicant", deleted "who provides proof of lawful status", and in Paragraph F(3), deleted "thirty days after the applicant's

birthday in the fourth year" and added "four years"; deleted former Subsections G and H, added a new Subsection G and redesignated former Subsection I as Subsection H; and in Subsection H, after "license fees", deleted "driving authorization card fees and commercial driver's license fees".

**The 2016 amendment,** effective May 18, 2016, limited the validity period of certain driver's licenses and identification cards; in the catchline, after "expiration of license", added "limited issuance period"; in Subsection A, after "Except as provided in", deleted "Subsection B or D" and added "Subsections B through I", after "Section 66-5-67 NMSA 1978, all", deleted "driver's", after "the license or shall expire thirty days after the applicant's", deleted "seventy-fifth" and added "seventy-ninth", after "telephonic or electronic means of a", deleted "driver's", after "obtained in the issuance of a", deleted "driver's", after "license", added "except the department shall not renew by mail or telephonic or electronic means a license if prohibited by federal law", and after "upon renewal of the", deleted "driver's"; in Subsection B, Paragraph (3), after "will not reach the age of", deleted "seventy-five" and added "seventy-nine"; in Subsection C, after "this section shall expire", deleted "thirty days after the applicant's birthday in the eighth year" and added "eight years"; added new Subsections E through H and redesignated former Subsection E as Subsection I; and in Subsection I, after "The", deleted "director may" and added "secretary shall", after "driver's license fees", added "driving authorization card fees", and after "Section 66-5-19 NMSA 1978", deleted "or" and added "and".

**The 2010 amendment,** effective July 1, 2010, in Subsection A, in the first sentence, after "Subsection B", added "or D"" and after "effective date of the license", added the remainder of the sentence; in the fourth sentence, after "renewal by mail", added "or telephonic or electronic means" and after "regulations adopted by the department", deleted "and"; added the remainder of the sentence; and in the fifth sentence, added "The department"; in Subsection B(3), after "eight-year license period", added the remainder of the sentence; added Subsection D; and in Subsection E, after "Section 66-5-19 NMSA 1978", added the remainder of the sentence.

**The 2004 amendment,** effective March 4, 2004, added Subsection D.

**The 1999 amendment,** effective July 1, 1999, added "eight-year issuance period" to the section heading; in Subsection A, added "Except as provided in Subsection B of this section, Section 66-5-19 NMSA 1978 and Section 66-5-67 NMSA 1978", and deleted "except those provided for in Section 66-5-19 NMSA 1978 and as otherwise provided in Section 66-5-67 NMSA 1978" following "a period of four years" in the first sentence, inserted "of a driver's license issued pursuant to the provisions of this subsection" in the fifth sentence; and added Subsections B and C.

**The 1997 amendment,** effective June 20, 1997, added the second sentence and substituted "Each" for "The" at the beginning of the third sentence.

**The 1995 amendment,** effective July 1, 1995, added "provide for renewal by mail pursuant to rules adopted by the department and may" in the last sentence.

**The 1992 amendment,** effective April 1, 1992, inserted "and as otherwise provided in Section 66-5-67 NMSA 1978" in the first sentence, substituted "department" for "director" in the second sentence, and substituted "department" for "division" in the last sentence.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 102.

60 C.J.S. Motor Vehicles § 146.

## 66-5-21.1. Effect of military service on driver's license.

A. Unless the license is suspended, canceled or revoked as provided by law, a driver's license issued by this state that is held by a person who is on active duty in the armed forces of the United States and is absent from this state, or is in this state only on leave status, remains valid beyond the expiration date of the license.

B. If the person benefiting from this section is reassigned to this state or is discharged from military service, the driver's license remains valid until the thirty-first day after the person's return to this state or discharge.

C. A person benefiting from this section shall also show valid military identification or discharge documents when asked to show a driver's license.

D. The provisions of this section also apply to a spouse accompanying a person benefiting from this section.

**History:** Laws 2005, ch. 124, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 124 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

## 66-5-22. Notice of change of address or name.

A. Whenever a person, after applying for or receiving a driver's license, moves from the address named in the application or in the issued license or when the name of a licensee is changed by marriage or otherwise, the person shall, within ten days, notify the division of the new address in writing or by electronic media pursuant to department regulations. In the event of a change of name, the license shall be delivered by the licensee to the division and the change of name be accomplished on the license itself. The division may require such evidence as it deems satisfactory regarding the change of name.

B. A person who violates the provisions of this section is guilty of a penalty assessment misdemeanor.

**History:** 1953 Comp., § 64-5-22, enacted by Laws 1978, ch. 35, § 244; 2004, ch. 59, § 14; 2018, ch. 74, § 36.

**ANNOTATIONS**

**The 2018 amendment,** effective July 1, 2018, provided a penalty for a violation of this section, and made technical changes; added subsection designation "A."; and added Subsection B.

**The 2004 amendment,** effective March 4, 2004, added to the method of notice "by electronic media pursuant to department regulations".

**Law reviews.** — For article, "Survey of New Mexico Law, 1979-80: Criminal Law and Procedure," see 11 N.M.L. Rev. 85 (1981).

## 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 [66-5-52 to 66-5-72 NMSA 1978] 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 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 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, with attention to Article III of the Driver License Compact [66-5-49 NMSA 1978], 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.

**History:** 1953 Comp., § 64-5-23, enacted by Laws 1978, ch. 35, § 245; 1979, ch. 71, § 3; 1981, ch. 360, § 2; 1988, ch. 56, § 3; 1989, ch. 14, § 20; 2003, ch. 164, § 5.

**ANNOTATIONS**

**The 2003 amendment,** effective July 1, 2003, in Subsection B, inserted "that it receives" following "conviction or reports", substituted "or from a tribal court" for "received by it" following "of this state", deleted "received by it under the laws of this state" following "right to counsel".

**The 1989 amendment,** effective July 1, 1989, in Subsection A substituted "driver's license or a commercial driver's license pursuant to the provisions of the New Mexico Commercial Driver's License Act" for "license" in the introductory paragraph, and substituted "received by it, which show either" for "which show" near the beginning of Subsection B.

**The 1988 amendment,** effective January 1, 1989, in Subsection B, inserted "or a subsequent offender and whether that offender was represented by counsel or waived the right to counsel" and "Article III of" near the middle of the subsection, and deleted "of 1963, Section 66-5-49, Article III, NMSA 1978" following "Driver License Compact"; and made minor stylistic changes.

## 66-5-24. Authority of division to cancel license.

A. The division is authorized to cancel any instruction permit, driver's license or provisional license upon determining that the licensee was not entitled to the issuance of the license or that the licensee failed to give the required or correct information in his application or committed any fraud in making the application.

B. Upon such cancellation, the licensee must surrender the license so canceled to the division.

**History:** 1953 Comp., § 64-5-24, enacted by Laws 1978, ch. 35, § 246; 1999, ch. 175, § 8.

**ANNOTATIONS**

**Cross references.** — For the definition of "cancellation", *see* 66-1-4.3 NMSA 1978.

For information required on application, *see* 66-5-9 NMSA 1978.

For the penalty for fraudulent applications, *see* 66-8-1 NMSA 1978.

**The 1999 amendment,** effective January 1, 2000, inserted "instruction permit" and "or provisional license" in Subsection A and made minor stylistic changes.

## 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 [66-1-1 NMSA 1978] or of notice of failure to appear or upon determination by the division of a failure to pay a penalty assessment.

**History:** 1953 Comp., § 64-5-25, enacted by Laws 1978, ch. 35, § 247; 1981, ch. 360, § 3; 2003, ch. 164, § 6.

**ANNOTATIONS**

**Cross references.** — For the definition of "suspension", *see* 66-1-4.16 NMSA 1978.

For reporting nonresident's accidents under the Driver License Compact, *see* 66-5-49 NMSA 1978.

**The 2003 amendment,** effective July 1, 2003, added Subsection C.

**Procedures employed and causes for which nonresident license may be suspended** or revoked are identical with that for the suspension or revocation of a resident operator's license. 1960 Op. Att'y Gen. No. 60-167.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 109 to 124.

60 C.J.S. Motor Vehicles § 164.1.

## 66-5-26. Suspending resident's license; automatic reinstatement without fee.

A. The division is authorized to suspend or revoke the license of 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 that if committed within the jurisdiction of this state, would be grounds for the suspension or revocation of the license of a driver.

B. A person whose driver's license was suspended solely for nonpayment or failure to appear and who is otherwise eligible to drive shall have the person's driver's license reinstated and shall not be required to pay a reinstatement fee. No later than September 1, 2023, the division shall, without requiring a reinstatement fee, reinstate the driver's license or nonresident operating privilege of every person whose license or nonresident operating privilege is suspended solely for nonpayment or failure to appear and who is otherwise eligible to drive.

**History:** 1953 Comp., § 64-5-26, enacted by Laws 1978, ch. 35, § 248; 1981, ch. 360, § 4; 2003, ch. 164, § 7; 2023, ch. 8, § 1.

## ANNOTATIONS

**Cross references.** — For the Driver License Compact, *see* 66-5-49 NMSA 1978.

**The 2023 amendment,** effective June 16, 2023, removed a provision authorizing the motor vehicle division to suspend the driver's license of a resident of this state, or the privilege of a nonresident to drive a motor vehicle in this state, for failure to appear or pay a penalty assessment imposed by a tribe or imposed in another state that is a signatory of the Nonresident Violator Compact with New Mexico, and provided that a person whose driver's license was suspended solely for nonpayment or failure to appear and who is otherwise eligible to drive shall have the person's driver's license reinstated and shall not be required to pay a reinstatement fee; in the section heading, after "license", deleted "conviction failure to appear; failure to appear; failure to pay in another state or tribal jurisdiction", and added "automatic reinstatement without fee"; and deleted former Subsection B and added a new Subsection B.

**The 2003 amendment,** effective July 1, 2003, added "or tribal jurisdiction" in the section heading; substituted "or by a tribe of an offense that if committed within the jurisdiction" for "of an offense therein which if committed in" following "in another state" in Subsection A; and substituted "imposed by a tribe or imposed in another state that" for "in another state which" following "a penalty assessment" in Subsection B.

**"Is authorized"** means that suspension or revocation of a driver's license for a conviction in another state is discretionary with the department. 1967 Op. Att'y Gen. No. 67-51.

**Indian reservation not "another state".** — By use of the term "another state," the legislature has equated the word "state" to that political status occupied by the state of New Mexico. If an Indian reservation is not a "state," then the division cannot revoke or

suspend a license under Section 64-13-57, 1953 Comp. (similar to this section), even though the tribal court sends a record of a conviction to the division. 1962 Op. Att'y Gen. No. 62-06.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 135.

Automobiles: Necessity or emergency as defense in prosecution for driving without operator's license or while license is suspended, 7 A.L.R.5th 73.

60 C.J.S. Motor Vehicles § 164.8.

## 66-5-27. Recognition of convictions for motor vehicle offenses committed on military installations; suspension or revocation.

The division is authorized to suspend or revoke the license of any resident of this state or the driving privilege of any member of the armed forces of the United States who is stationed at a federal military installation within this state, upon the receipt of a notice, from the authority having jurisdiction over offenses which occur on a federal military installation, of the conviction of such person for an offense committed on such federal military installation, which if committed in this state, would be grounds for the suspension or revocation of the license of a driver.

**History:** 1953 Comp., § 64-5-27, enacted by Laws 1978, ch. 35, § 249.

## 66-5-27.1. Recognition of convictions for motor vehicle offenses committed on tribal land; intergovernmental agreements; information sharing with tribal courts.

A. The department is authorized to enter into an intergovernmental agreement with the appropriate governmental entity of a tribe to permit the exchange of information between the tribal court and the division regarding persons who are adjudicated for a motor vehicle offense that occurred within the jurisdiction of the tribal court.

B. The division is authorized to suspend or revoke the driver's license or driving privilege of a person who has been convicted of a motor vehicle offense by a tribal court; provided that:

(1) the department has entered into an intergovernmental agreement with the tribe that permits the exchange of information on motor vehicle offense convictions between the tribal court and the division; and

(2) the division has received notice from the tribal court, or other authority as provided in the intergovernmental agreement, that the driver has been convicted of a motor vehicle offense that, if committed within the jurisdiction of the state, would be

grounds for suspension or revocation of the driver's license or driving privilege of the offender.

**History:** Laws 2003, ch. 164, § 8.

**ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 164, § 11 made the section effective July 1, 2003.

## 66-5-28. Repealed.

**History:** 1953 Comp., § 64-5-28, enacted by Laws 1978, ch. 35, § 250; 1979, ch. 71, § 4; 1989, ch. 14, § 21; repealed by Laws 2009, ch. 200, § 8.

**ANNOTATIONS**

**Repeals.** — Laws 2009, ch. 200, § 8 repealed 66-5-28 NMSA 1978, as enacted by Laws 1978, ch. 35, § 250, relating to requirement that the court forward revoked drivers' licenses to the division and definitions of "convicted" and "conviction", effective July 1, 2009. For provisions of former section, *see* the 2008 NMSA 1978 on *NMOneSource.com.*

## 66-5-29. Mandatory revocation of license by division.

A. The division shall immediately revoke the driving privilege or driver's license of a driver upon receiving a record of the driver's adjudication as a delinquent for or conviction of any of the following offenses, whether the offense is under any state law or local ordinance, when the conviction or adjudication has become final:

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

(2) any offense rendering a person a "first offender" as defined in the Motor Vehicle Code [66-1-1 NMSA 1978];

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

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

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

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

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

B. Except as provided in the Ignition Interlock Licensing Act [66-5-501 to 66-5-504 NMSA 1978] and in Subsection C, D, E or F of this section, a person whose driving privilege or driver's license has been revoked under this section shall not be entitled to apply for or receive a new license until one year from the date that the conviction is final and all rights to an appeal have been exhausted.

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

(1) one year for a first offender; or

(2) for a subsequent offender:

(a) two years for a second conviction;

(b) three years for a third conviction; or

(c) 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.

D. The division shall apply the license revocation provisions of Subsection C of this section and the provisions of Subsection D of Section 66-5-5 NMSA 1978 to a person who was three or more times convicted of driving a motor vehicle under the influence of intoxicating liquor or drugs and who has a driver's license revocation pursuant to the law in effect prior to June 17, 2005, upon the request of the person and if the person has had an ignition interlock license for three years or more and has proof from the ignition interlock vendor of no violations of the ignition interlock device in the previous six months.

E. 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.

F. Upon receipt from a district court of a record of conviction for the offense of shooting at or from a motor vehicle pursuant to Subsection B of Section 30-3-8 NMSA 1978 or of a conviction for a conspiracy or an attempt to commit that offense, the division shall revoke the driver's license or driving privileges of the convicted person. A person whose driver's license or driving privilege has been revoked pursuant to the

provisions of this subsection shall not be entitled to apply for or receive any new driver's license or driving privilege until one year from the date that the conviction is final and all rights to an appeal have been exhausted.

**History:**1953 Comp., § 64-5-29, enacted by Laws 1978, ch. 35, § 251; 1979, ch. 71, § 5; 1981, ch. 375, § 1; 1984, ch. 72, § 2; 1988, ch. 56, § 4; 1989, ch. 329, § 5; 1993, ch. 66, § 4; 1993, ch. 78, § 4; 1999, ch. 175, § 9; 2003, ch. 239, § 8; 2005, ch. 241, § 2; 2005, ch. 269, § 2; 2007, ch. 319, § 46.

## ANNOTATIONS

**Cross references.** — For the definition of "first offender", *see* 66-1-4.6 NMSA 1978.

For the definition of "subsequent offender", *see* 66-1-4.16 NMSA 1978.

For suspending license upon conviction in another state, *see* 66-5-26 NMSA 1978.

For license revocation for failure to stop at accident, *see* 66-7-201 NMSA 1978.

**The 2007 amendment,** effective June 15, 2007, provided for revocation of driving privileges and driver’s licenses and added Subsection D.

**The 2005 amendment,** effective June 17, 2005, deleted the former qualification in Subsection A(1) that a permit or license of a first offender may not be revoked if the person attends a driver rehabilitation program; deleted the former provision of Subsection B that a person may not apply for or receive a new license until the expiration of one year from the date of the last application on which the revoked license was surrendered to the division, if no appeal is filed; provide that a person may not apply for or receive a new license until the expiration of one year from the date of the conviction; in Subsection C, provided that a person who is adjudged delinquent for driving while under the influence of intoxicating liquor or drugs of convicted pursuant to 66-8-102 NMSA 1978 is subject to license revocation; in Subsection C(1), provided that revocation may be for one year for a first offender; in Subsections C(2)(a) through (c), provided revocation periods for subsequent periods; and in Subsection E, deleted the former provision that a person may not apply for or receive a new license until the expiration of one year from the date of the last application on which the revoked license was surrendered to the division, if no appeal is filed; and provided that a person may not apply for or receive a new license until the expiration of one year from the date of the conviction.

Laws 2005, ch. 241, § 2 and Laws 2005, ch. 269, § 2 enacted identical amendments to this section. The section was set out as amended by Laws 2005, ch. 269, § 2. *See* 12-1-8 NMSA 1978.

**The 2003 amendment,** effective April 6, 2003, substituted "Except as provided in the Ignition Interlock Licensing Act, a" for "Any" at the start of Subsection B; and deleted "Subsection J of" preceding "Section 32A-2-19 NMSA 1978" in Subsection D.

**The 1999 amendment,** effective January 1, 2000, in Subsection A inserted "instruction permit, driver's" and inserted "or provisional license", updated statutory references, and made minor stylistic changes.

**The 1993 amendment,** effective July 1, 1993, substituted "Subsection C, D or E" for "Subsection C or D" in Subsection B; added Subsection E; and made a minor stylistic change in Subsection C. This section was also amended by Laws 1993, ch. 66, § 4, effective January 1, 1994. The section is set out as amended by Laws 1993, ch. 78, § 4. *See* 12-1-8 NMSA 1978.

**The 1989 amendment,** effective July 1, 1989, in Subsection A, substituted "immediately" for "forthwith"; in Subsection B, inserted "or D" near the beginning; and added Subsection D.

**The 1988 amendment,** effective July 1, 1988, substituted present Subsection A(2) for former Subsection A(2), regarding deferred sentences for first offenders convicted of driving while under the influence of intoxicating liquor who attend a driver rehabilitation program, and corrected a misspelling in Subsection B.

**Reinstatement of license.** — A driver’s license that has been revoked under Subsection C of Section 66-5-29 NMSA 1978 must remain revoked until the driver has applied for reinstatement, complied with all of the provision of the Motor Vehicle Code, and paid fees imposed by Section 66-5-33.1 NMSA 1978. *City of Santa Fe v. One (1) Black 2006 Jeep*, 2012-NMCA-027, 284 P.3d 1076.

Where defendant’s vehicle was forfeited under a municipal ordinance that permitted forfeiture of a vehicle operated by a person whose license was revoked as a result of a prior DWI conviction; defendant’s driver’s license had been revoked as a result of defendant’s conviction of a DWI; defendant was eligible for reinstatement prior to the time defendant was stopped for the traffic violation that resulted in the forfeiture action; and defendant had failed to obtain reinstatement of the license before the traffic stop, defendant’s vehicle was subject to forfeiture under the municipal ordinance. *City of Santa Fe v. One (1) Black 2006 Jeep*, 2012-NMCA-027, 284 P.3d 1076.

**District court erred in revoking appellant's driver's license in conviction** for operating a motor vehicle while under the influence of alcoholic beverages since only the commissioner (now division) could revoke the license. *City of Roswell v. Ferguson*, 1959-NMSC-069, 66 N.M. 152, 343 P.2d 1040.

**Municipality may enact drunken driving ordinance** notwithstanding that state statute likewise covers same subject matter and provides penalty for violations. *Mares v. Kool*, 1946-NMSC-032, 51 N.M. 36, 177 P.2d 532.

**Mandatory revocation by state not denial of jury trial.** — Mandatory revocation by state authorities of the driving license of any person convicted under Section 64-13-59, 1953 Comp. (similar to this section), for a period of one year does not deny the right to trial by a jury in district court on appeal, in violation of N.M. Const., art. II, §§ 12 and 14. *City of Tucumcari v. Briscoe*, 1954-NMSC-103, 58 N.M. 721, 275 P.2d 958.

**Review of mandatory revocation of license.** — Although the Motor Vehicle Code is silent as to any provision expressly authorizing the right to appeal from a mandatory revocation of a driver's license, this omission does not deprive one whose license has been revoked of a right of judicial review by the district court of the administrative action by means of a petition for writ of certiorari. *Littlefield v. State ex rel. Taxation & Revenue Dep't*, 1992-NMCA-083, 114 N.M. 390, 839 P.2d 134, cert. denied, 114 N.M. 123, 835 P.2d 839.

**Jurisdiction of proceeding for restoration of driving privileges.** — Because plaintiffs had never applied for, much less been denied, a driver's license after expiration of the one-year revocation period, they failed to take the mandated administrative steps necessary to vest jurisdiction in the district court of their action seeking restoration of their driving privileges. *Alvarez v. State Taxation and Revenue Dep't*, 1999-NMCA-006, 126 N.M. 490, 971 P.2d 1280.

**Division bound by plea agreement.** — Since, pursuant to a plea bargain, the judgment and sentence upon conviction of a motorist for driving under the influence expressly provided that the conviction was to be treated as a first conviction under Section 66-8-102 NMSA 1978, the division was bound by the judgment and had no authority to revoke the motorist's license, even though the motorist had a previous conviction. *Collyer v. State Taxation & Revenue Dep't Motor Vehicle Div.*, 1996-NMCA-029, 121 N.M. 477, 913 P.2d 665.

**Plea agreement binding only with respect to offense charged.** — A district court judgment entered pursuant to a plea agreement, both of which provided that defendant's offense of driving while intoxicated would be treated as a first offense for all lawful purposes, did not prevent the motor vehicle division from revoking defendant's license for repeat violations of the Implied Consent Act. *Medrow v. Taxation & Revenue Dep't*, 1998-NMCA-173, 126 N.M. 332, 968 P.2d 1195.

**Revocation required upon conviction.** — The revocation of the license of one convicted of driving while intoxicated is required. The record of conviction of this offense in the justice of the peace court (now magistrate court) was sufficient evidence of the offense, and commissioner (now director) could properly suspend his license (rendered under former provision comparable to Paragraphs (2) and (3) of Subsection A of this section. 1960 Op. Att'y Gen. No. 60-194

**Division cannot revoke for conviction on Indian reservation.** — By use of the term "another state," the legislature has equated the word "state" to that political status occupied by the state of New Mexico. If an Indian reservation is not a "state," then the

division cannot revoke or suspend a license under Section 64-13-57, 1953 Comp. (similar to Section 66-5-26 NMSA 1978), even though the tribal court sends a record of a conviction to the division. 1962 Op. Att'y Gen. No. 62-06.

**Finality of conviction not suspended by deferred judgment and sentence.** — If the imposition of the judgment and sentence of the court is deferred under the provisions of Section 31-20-3 NMSA 1978, the finality of the conviction is not suspended within the meaning of Sections 64-13-58 and 64-13-59, 1953 Comp. (similar to Section 66-5-28 NMSA 1978 and this section). 1960 Op. Att'y Gen. No. 60-49.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 115 to 121.

Necessity of notice and hearing before revocation or suspension of motor vehicle driver's license, 60 A.L.R.3d 361.

Sufficiency of notice and hearing before revocation or suspension of motor vehicle driver's license, 60 A.L.R.3d 427.

60 C.J.S. Motor Vehicles § 164.5.

## 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;

(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 at least 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 comply with the terms of a citation issued in a foreign jurisdiction that is a party to the Nonresident Violator Compact [66-8-137.1 NMSA 1978] 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 may 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 not later than twenty days, not counting Saturdays, Sundays and legal holidays, after receipt of the request. The hearing 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 [Chapter 7, Article 1B NMSA 1978]. 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.

**History:** 1953 Comp., § 64-5-30, enacted by Laws 1978, ch. 35, § 252; 1979, ch. 71, § 6; 1981, ch. 360, § 5; 1981, ch. 380, § 1; 1991, ch. 192, § 1; 1999, ch. 175, § 10; 2003, ch. 164, § 9; 2015, ch. 73, § 31; 2019, ch. 224, § 1; 2023, ch. 8, § 2.

## ANNOTATIONS

**Cross references.** — For definition of "suspension", see 66-1-4.16 NMSA 1978.

For suspending resident's license upon conviction in another state, see 66-5-26 NMSA 1978.

For subpoenas, see Rule 1-045 NMRA.

**The 2023 amendment,** effective June 16, 2023, removed provisions authorizing the motor vehicle division to 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 that the licensee has failed to fulfill a signed promise to appear in 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 tribe, or that the licensee has failed to pay a penalty assessment within thirty days of the date of issuance by the state or a tribe; in Subsection A, Paragraph A(9), after "accumulated", added "at least"; in Subsection B, deleted former Paragraphs B(1) and B(2); in Subsection C, after "that jurisdiction", changed "shall" to "may"; and in Subsection D, after "as early as practicable, but", deleted "within no more" and added "not later".

**The 2019 amendment,** effective October 1, 2019, provided for administrative suspensions of instruction permits, driver's licenses or provisional licenses; in Subsection A, deleted Paragraphs A(9) and A(10) and redesignated former Paragraph A(11) as Paragraph A(9); and added new Subsections B and C and redesignated former Subsection B as Subsection D.

**The 2015 amendment,** effective July 1, 2015, entitled a license whose license has been suspended the right to a hearing before the administrative hearings office; in the introductory sentence of Subsection A, after "The division", deleted "is authorized to" and added "may"; in Subsection B, after "notify the licensee in writing", deleted "and upon his request shall afford him an opportunity for a hearing" and added "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", after "practicable", added "but", after "within", deleted "not to exceed" and added "no more than", after "request", added "The hearing shall be held", after "county", deleted "wherein" and added "in which", after "resides unless the", deleted "division" and added "hearing officer", after "United States mail. The", deleted "director" and added "hearing officer", after "may, in", deleted "his" and added "the hearing officer’s", after "twenty-day period", deleted "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" and added "The hearing shall be held as provided in the Administrative Hearings Office Act. After", after "the hearing, the", deleted "division" and added "hearing officer", after "rescind", deleted "its" and added "the", and after "suspension or", deleted "good cause appearing therefor, may".

**The 2003 amendment,** effective July 1, 2003, inserted "including information provided to the state pursuant to an intergovernmental agreement authorized by Section 66-5-27.1 NMSA 1978" following "other sufficient evidence" in Subsection A; rewrote Paragraph A(7); in Paragraph A(9), substituted "state court or tribal court" for "court" following "notice from a", added "or pursuant to the laws of the tribe" at the end; inserted "by the state or a tribe" near the end of Paragraph A(10).

**The 1999 amendment,** effective January 1, 2000, in Subsection A inserted "instruction permit, driver's" and "or provisional license" and made a minor stylistic change.

**The 1991 amendment,** effective June 14, 1991, rewrote Paragraph (9) of Subsection A, which read "has failed to fulfill a signed promise to appear in court as evidenced by notice from a court", and made minor stylistic changes in Subsection B.

**Necessity for procedural due process** applies to suspension of one's driver's license by this state. *City of Albuquerque v. Juarez*, 1979-NMCA-084, 93 N.M. 188, 598 P.2d 650, *overruled on other grounds by State v. Herrera*, 1991-NMCA-005, 111 N.M. 560, 807 P.2d 744, cert. denied, 111 N.M. 529, 807 P.2d 227.

**Constitutional for administrative officer to have power to suspend license.** — A driver's license being a privilege, there is no denial of the due process of law resulting from placing the power to revoke or suspend the same in an administrative officer. *Johnson v. Sanchez*, 1960-NMSC-029, 67 N.M. 41, 351 P.2d 449.

**Suspension of license purely administrative.** — The suspension of an operator's license, even though perhaps quasi-judicial, is purely an administrative act and not a judicial duty. *Johnson v. Sanchez*, 1960-NMSC-029, 67 N.M. 41, 351 P.2d 449.

**Twenty day period not mandatory.** — The language in Subsection B providing that upon request of the licensee a hearing shall be conducted within 20 days is directory and not mandatory in nature. *Littlefield v. State ex rel. Taxation & Revenue Dep't*, 1992-NMCA-083, 114 N.M. 390, 839 P.2d 134, cert. denied, 114 N.M. 123, 835 P.2d 839.

**Juvenile's license can be suspended without juvenile court action.** — Motor vehicle department (now motor vehicle division) can suspend driving privileges of a juvenile by hearing before a representative of the department, when there has been no citation or petition to the juvenile court, and no action taken by a juvenile court of the state of New Mexico. 1961 Op. Att'y Gen. No. 61-97.

**Section is only statutory authorization for revocation of Indian's license.** — Section 64-13-60, 1953 Comp. (similar to this section), is the only statutory authorization for the revocation of an Indian's driver's license because of his driving habits on state highways on Indian land. Since it does not provide that a person need be convicted of traffic offenses, it appears clearly within the discretion of the division to act if it has "sufficient evidence" tending to show that the driver is habitually reckless or negligent. 1962 Op. Att'y Gen. No. 62-06.

**Suspension without preliminary hearing.** — Section 64-13-60, 1953 Comp. (similar to this section), grants the power to suspend the license of an operator without preliminary hearing upon sufficient evidence that the licensee has committed an offense for which mandatory revocation of license is required upon conviction. 1960 Op. Att'y Gen. No. 60-194.

**Request for hearing.** — The licensee may demand a hearing on the suspension and obtain a hearing within 20 days following the request for the hearing, and if the hearing is not allowed, the suspension would be invalid. 1959 Op. Att'y Gen. No. 59-06.

**Surrender of license not condition precedent to holding hearing.** — Section 64-13-63, 1953 Comp. (similar to former Section 66-5-33 NMSA 1978), does clearly give the division the right to require a license surrender to the division upon entering the order of suspension. However, that provision does not give the division the authority to require such a surrender as a condition precedent to holding the hearing required by Section 64-13-60, 1953 Comp. (similar to this section). 1960 Op. Att'y Gen. No. 60-129.

**Sufficient evidence of fault must be required.** — Section 64-13-60 A (2), 1953 Comp. (similar, but with substantially different wording as to fault, to this section), is unconstitutional for failure to require sufficient evidence of fault on the part of a driver involved in an accident resulting in the death or personal injury of another or serious property damage, in that the failure to include such a requirement renders the statute an attempt to grant the department of motor vehicles (now motor vehicle division) the power to deprive licensees of property without due process of law, and denies to licensees the equal protection of the laws, contrary to N.M. Const., art. II, § 18. 1960 Op. Att'y Gen. No. 60-194 (rendered under prior law).

**Causes for suspension same with residents and nonresidents.** — The procedures employed and the causes for which a nonresident license may be suspended or revoked are identical with that for the suspension or revocation of a resident operator's license. 1960 Op. Att'y Gen. No. 60-167.

**Suspension if convicted in municipal court of driving while intoxicated.** — A suspension of a driver's license can be made by the motor vehicle division if the driver is convicted in municipal court for driving while intoxicated even though the person convicted takes an appeal to the district court. 1959 Op. Att'y Gen. No. 59-06.

**Law reviews.** — For article, "Constitutional Limitations on the Exercise of Judicial Functions by Administrative Agencies," see 7 Nat. Resources J. 599 (1972).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 115 to 121.

What amounts to conviction or adjudication of guilt for purpose of refusal, revocation, or suspension of automobile driver's license, 79 A.L.R.2d 866.

Suspension or revocation for refusal to take sobriety test, 88 A.L.R.2d 1064.

Ordinance providing for suspension or revocation of state-issued driver's license as within municipal power, 92 A.L.R.2d 204.

Conviction or acquittal in previous criminal case as bar to revocation or suspension of driver's license on same factual charge, 96 A.L.R.2d 612.

Regulations establishing a "point system" as regards suspension or revocation of license of operator of motor vehicle, 5 A.L.R.3d 690.

Denial, suspension, or cancellation of driver's license because of physical disease or defect, 38 A.L.R.3d 452.

Necessity of notice and hearing before revocation or suspension of motor vehicle driver's license, 60 A.L.R.3d 361.

Sufficiency of notice and hearing before revocation or suspension of motor vehicle driver's license, 60 A.L.R.3d 427.

Validity and construction of legislation authorizing revocation or suspension of operator's license for "habitual," "persistent," or "frequent" violations of traffic regulations, 48 A.L.R.4th 367.

Validity and application of statute or regulation authorizing revocation or suspension of driver's license for reason unrelated to use of or ability to operate motor vehicle, 18 A.L.R.5th 542.

Admissibility, in motor vehicle license suspension proceedings, of evidence obtained by unlawful search and seizure, 23 A.L.R.5th 108.

60 C.J.S. Motor Vehicles §§ 164.5, 165.11 - 165.13.

## 66-5-31. Division may require reexamination.

The division, having good cause to believe that a licensed driver is incompetent or otherwise not qualified to be licensed, may request that, upon written notice of at least five days to the licensee, he submit to an examination. Upon the conclusion of such examination, the division shall take action as may be appropriate and may suspend the license of such person or permit him to retain such license, or may issue a license subject to restrictions as permitted under Section 66-5-19 NMSA 1978. Refusal or neglect of the licensee to submit to such examination shall be ground for suspension of his license.

**History:** 1953 Comp., § 64-5-31, enacted by Laws 1978, ch. 35, § 253.

**ANNOTATIONS**

**Cross references.** — For examination of applicants, *see* 66-5-14 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 111.

60 C.J.S. Motor Vehicles § 156.

## 66-5-32. Period of suspension or revocation.

A. The division shall not suspend a driver's license or privilege to drive a motor vehicle on the public highways for a period of more than one year except as permitted under Sections 60-7B-1, 66-5-5, 66-5-39 and 66-5-39.1 NMSA 1978.

B. Except as provided in the Ignition Interlock Licensing Act [66-5-501 to 66-5-504 NMSA 1978], a person whose license or privilege to drive a motor vehicle on the public highways has been revoked shall not be entitled to have the license or privilege renewed or restored unless the revocation was for a cause that has been removed, except that after the expiration of the periods specified in Subsections B and C of Section 66-5-29 NMSA 1978 from the date on which the revoked license was surrendered to and received by the division, the person may make application for a new license as provided by law.

**History:** 1953 Comp., § 64-5-32, enacted by Laws 1978, ch. 35, § 254; 1981, ch. 360, § 6; 1990, ch. 120, § 27; 2003, ch. 239, § 9; 2005, ch. 241, § 3; 2005, ch. 269, § 3; 2013, ch. 163, § 1; 2023, ch. 8, § 3.

**ANNOTATIONS**

**The 2023 amendment,** effective June 16, 2023, removed a provision authorizing the secretary of taxation and revenue to extend indefinitely the suspension period for failure to appear or failure to remit a penalty assessment; in Subsection A, after "as permitted under", deleted "Subsection C of this section and"; and deleted Subsection C.

**The 2013 amendment,** effective July 1, 2013, clarified the period of suspension or revocation of driver’s licenses; and in Subsection A, after "Sections", added "60-7B-1" and after "66-5-39", added "and 66-5-39.1".

**The 2005 amendment,** effective June 17, 2005, added the provision in Subsection B that a license may be restored after the expiration of the periods specified in Subsection C of 66-5-29 NMSA 1978.

**The 2003 amendment,** effective April 6, 2003, substituted "Except as provided in the Ignition Interlock Licensing Act, a" for "Any" at the start of Subsection B.

**The 1990 amendment,** effective July 1, 1990, substituted "the period specified in Subsection B of Section 66-5-29 NMSA 1978" for "one year", deleted "but the division shall not then issue a new license unless and until it is satisfied, after investigation of the character, habits and driving ability of such person that it will be safe to grant the privilege of driving a motor vehicle on the public highways" following "as provided by law", and made minor stylistic changes in Subsection B.

**Jurisdiction of proceeding for restoration of driving privileges.** — Because plaintiffs had never applied for, much less been denied, a driver's license after expiration of the one-year revocation period, they failed to take the mandated administrative steps necessary to vest jurisdiction in the district court of their action seeking restoration of their driving privileges. *Alvarez v. State Taxation and Revenue Dep't*, 1999-NMCA-006, 126 N.M. 490, 971 P.2d 1280.

**Construction of provision limiting revocation.** — Provision that driver's license is not to be revoked for more than one year under Section 64-13-62, 1953 Comp. (similar to this section), was enacted prior to the Implied Consent Act (Sections 64-22-2.4 to 64-22-2.12, 1953 Comp.) (similar to Sections 66-8-105 to 66-8-112 NMSA 1978) and must be read in conjunction therewith. 1972 Op. Att'y Gen. No. 72-01.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 145.

60 C.J.S. Motor Vehicles §§ 164.48, 164.49.

## 66-5-33. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 47, § 3, repealed 66-5-33 NMSA 1978, as enacted by Laws 1978, ch. 35, § 255, relating to the surrender and return of a license and reinstatement fee, effective June 14, 1985. For present comparable provisions, *see* 66-5-33.1 and 66-5-230 NMSA 1978.

## 66-5-33.1. Reinstatement of driver's license or registration; ignition interlock; fee.

A. Whenever a driver's license or registration is suspended or revoked and an application has been made for its reinstatement, compliance with all appropriate provisions of the Motor Vehicle Code and the payment of a fee of twenty-five dollars ($25.00) is a prerequisite to the reinstatement of any license or registration.

B. If a driver's license was revoked for driving while under the influence of intoxicating liquor or drugs, for aggravated driving while under the influence of intoxicating liquor or drugs or pursuant to the Implied Consent Act [66-8-105 to 66-8-112 NMSA 1978], the following are required to reinstate the driver's license:

(1) an additional fee of seventy-five dollars ($75.00);

(2) completion of the license revocation period;

(3) satisfaction of any court-ordered ignition interlock requirements;

(4) a minimum of six months of driving with an ignition interlock license with no attempts to circumvent, remove or tamper with the ignition interlock device;

(5) evidence that the ignition interlock device has not recorded two vehicle lockouts; and

(6) evidence of verified active usage as that phrase is defined by the bureau.

C. A person whose driver's license reinstatement is denied may file an appeal pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

D. The department may reinstate the driving privileges of an out-of-state resident without the requirement that the person obtain an ignition interlock license for a minimum of six months, if the following conditions are met:

(1) the license revocation period is completed;

(2) satisfactory proof is presented to the department that the person is no longer a resident of New Mexico; and

(3) the license reinstatement fee is paid.

E. Fees collected pursuant to Subsection B of this section are appropriated to the local governments road fund. The department shall maintain an accounting of the fees collected and shall report that amount upon request to the legislature.

F. For the purposes of this section, "vehicle lockout" means a driver has failed:

(1) a breath test six times within a period of three hours; or

(2) initial breath tests or random breath re-tests ten times within a period of thirty days.

**History:** 1978 Comp., § 66-5-33.1, enacted by Laws 1985, ch. 47, § 1; 1988, ch. 56, § 6; 1989, ch. 224, § 1; 1995, ch. 6, § 12; 1999, ch. 49, § 4; 2009, ch. 254, § 1; 2018, ch. 74, § 38.

## ANNOTATIONS

**Cross references.** — For the local governments road fund, *see* 67-3-28.2 NMSA 1978.

**The 2018 amendment,** effective July 1, 2018, clarified certain provisions of the section, provided new requirements for the reinstatement of a revoked driver's license, provided an appeal when an application for driver's license reinstatement is denied, and defined "vehicle lockout" as used in this section; in Subsection B, Paragraph B(4), after "circumvent", added "remove", and added Paragraphs B(5) and B(6); added a new Subsection C and redesignated former Subsections C and D as Subsections D and E, respectively; and added Subsection F.

**The 2009 amendment,** effective July 1, 2009, in Subsection B, after "license was", deleted "suspended or"; after "drugs or", deleted "for a violation of" and added "pursuant"; after "Implied Consent Act", deleted "an additional fee of seventy-five dollars ($75.00) is" and added "the following are"; added Paragraphs (1) through (4) of Subsection B; and added Subsection C.

**The 1999 amendment,** effective July 1, 1999, added the Subsection A and B designations, deleted "except that" at the end of Subsection A, in Subsection B inserted "for aggravated driving while under the influence of intoxicating liquor or drugs" in the first sentence, substituted "Fees collected pursuant to this subsection are appropriated to" for "The division shall deposit the additional fee in" at the beginning of the second sentence, and rewrote the third sentence.

**The 1995 amendment,** effective July 1, 1995, substituted "local governments road fund" for "general fund" in the next to last and last sentences.

**The 1990 amendment,** effective May 16, 1990, substituted "one hundred fifty dollars ($150)" for "seventy-five dollars ($75.00)".

**The 1989 amendment,** effective July 1, 1991, substituted "general fund" for "DWI fund" at the end of the second sentence, and added the third sentence.

**The 1988 amendment,** effective July 1, 1988, inserted the language at the end of the section, beginning with "except that".

**Reinstatement of license.** — A driver's license that has been revoked under Subsection C of Section 66-5-29 NMSA 1978 must remain revoked until the driver has applied for reinstatement, complied with all of the provision of the Motor Vehicle Code, and paid fees imposed by Section 66-5-33.1 NMSA 1978. *City of Santa Fe v. One (1) Black 2006 Jeep*, 2012-NMCA-027, 284 P.3d 1076.

Where defendant's vehicle was forfeited under a municipal ordinance that permitted forfeiture of a vehicle operated by a person whose license was revoked as a result of a prior DWI conviction; defendant's driver's license had been revoked as a result of defendant's conviction of a DWI; defendant was eligible for reinstatement prior to the time defendant was stopped for the traffic violation that resulted in the forfeiture action; and defendant had failed to obtain reinstatement of the license before the traffic stop,

defendant's vehicle was subject to forfeiture under the municipal ordinance. *City of Santa Fe v. One (1) Black 2006 Jeep*, 2012-NMCA-027, 284 P.3d 1076.

**Reinstatement provision does not violate ex post facto laws.** — The 2009 amendment to 66-5-33.1 NMSA 1978, which requires a minimum of six months of driving with an ignition interlock device prior to reinstatement of a driver's license that was revoked for DWI or pursuant to the Implied Consent Act, is not penal for purposes of the constitutional prohibition against ex post facto laws and applies to persons who seek reinstatement of their driver's licenses on or after July 1, 2009, regardless of when their DWI violations were committed, when their licenses were revoked, or when they completed their license revocation period and became eligible to seek reinstatement of their licenses. *Yepa v. N.M. Taxation & Revenue Dep't*, 2015-NMCA-099, cert. denied, 2015-NMCERT-008.

**Conditions of reinstatement apply retroactively.** — The 2009 amendment to Section 66-5-33.1 NMSA 1978, which conditions reinstatement of a driver's license that was revoked for driving while intoxicated on, among other things, a minimum of six months of driving with no attempts to tamper with or circumvent the use of an ignition interlock device, is not penal for purposes of the constitutional prohibition against ex post facto laws and applies to persons who seek reinstatement of their driver's licenses on or after July 1, 2009, regardless of when their DWI violations were committed, their licenses were revoked for DWI, or they completed their license revocation period and became eligible to seek reinstatement of their licenses. 2011 Op. Att'y Gen. No. 11-03.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Validity, construction, application, and effect of statute requiring conditions, in addition to expiration of time, for reinstatement of suspended or revoked driver's license, 2 A.L.R.5th 725.

## 66-5-34. No operation under foreign license during suspension or revocation in this state.

Any resident or nonresident whose driver's license or right or privilege to operate a motor vehicle in this state has been suspended or revoked as provided in this article shall not operate a motor vehicle in this state under a license, permit or registration certificate issued by any other jurisdiction or otherwise during such suspension or after such revocation until a new license is obtained, when and as permitted under this article.

**History:** 1953 Comp., § 64-5-34, enacted by Laws 1978, ch. 35, § 256.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Automobiles: Necessity or emergency as defense in prosecution for driving without operator's license or while license is suspended, 7 A.L.R.5th 73.

60 C.J.S. Motor Vehicles § 164.48.

## 66-5-35. Limited driving privilege upon suspension or revocation.

A. Upon suspension or revocation of a person's driving privilege or driver's license following conviction or adjudication as a delinquent under any law, ordinance or rule relating to motor vehicles, the person may apply to the department for a driver's license, provisional license or instruction permit to drive, limited to use allowing the person to engage in gainful employment, to attend school or to attend a court-ordered treatment program, except that the person shall not be eligible to apply:

(1) for a limited commercial driver's license or an ignition interlock license in lieu of a revoked or suspended commercial driver's license;

(2) for a limited license when the person's driver's license was revoked pursuant to the provisions of the Implied Consent Act [66-8-105 to 66-8-112 NMSA 1978], except as provided in the Ignition Interlock Licensing Act [66-5-501 to 66-5-504 NMSA 1978];

(3) for a limited license when the person's driver's license was revoked pursuant to the provisions of Section 66-8-102 NMSA 1978, except as provided in the Ignition Interlock Licensing Act;

(4) for a limited license when the person's driver's license is denied pursuant to the provisions of Subsection D of Section 66-5-5 NMSA 1978, except as provided in the Ignition Interlock Licensing Act; or

(5) for a limited license when the person's driver's license was revoked pursuant to a conviction for committing homicide by vehicle, great bodily harm by vehicle, or homicide by vehicle or great bodily harm by vehicle while under the influence of intoxicating liquor or drugs, as provided in Section 66-8-101 NMSA 1978, except as provided in the Ignition Interlock Licensing Act.

B. Upon receipt of a fully completed application that complies with statutes and rules for a limited license or an ignition interlock license and payment of the fee specified in this subsection, the department shall issue a limited license, ignition interlock license or permit to the applicant showing the limitations specified in the approved application. For each limited license, ignition interlock license or permit to drive, the applicant shall pay to the department a fee of forty-five dollars ($45.00), which shall be transferred to the department of transportation. All money collected under this subsection shall be used for DWI prevention and education programs for elementary and secondary school students. The department of transportation shall coordinate with the department of health to ensure that there is no program duplication. The limited license or permit to drive may be suspended as provided in Section 66-5-30 NMSA 1978.

**History:** 1953 Comp., § 64-5-35, enacted by Laws 1978, ch. 35, § 257; 1983, ch. 257, § 1; 1984, ch. 72, § 3; 1985, ch. 178, § 1; 1987, ch. 268, § 24; 1989, ch. 164, § 1; 1993, ch. 66, § 5; 1999, ch. 62, § 1; 2001, ch. 47, § 1; 2001, ch. 242, § 1; 2003, ch. 239, § 10; 2005, ch. 241, § 4; 2005, ch. 269, § 4; 2007, ch. 319, § 47; 2013, ch. 101, § 1.

## ANNOTATIONS

**Cross references.** — For definitions of "director" and "division", *see* 66-1-4.4 NMSA 1978.

For financial responsibility, *see* 66-5-201 NMSA 1978 et seq.

**The 2013 amendment,** effective July 1, 2013, prohibited the issuance of a limited license to a person convicted of homicide by vehicle or great bodily harm by vehicle except as provided in the Ignition Interlock Licensing Act; and in Paragraph (5) of Subsection A, after "great bodily", deleted "injury" and added "harm", after "great bodily harm by vehicle", added "or homicide by vehicle or great bodily harm by vehicle while under the influence of intoxicating liquor or drugs", and after "Section 66-8-101 NMSA 1978", added "except as provided in the Ignition Interlock Licensing Act".

**The 2007 amendment,** effective June 15, 2007, provided for driver’s licenses, provisional licenses or instruction permits and eliminated the provisions that provided for a hearing on the denial of a limited driver’s license and for review of a hearing officer’s order.

**The 2005 amendment,** effective June 17, 2005, deleted the reference to former Subsection B in Subsection A(2) and deleted former Subsection B, which provided that a first time offender may apply for a limited license, permit or ignition interlock license thirty days after suspension or revocation of his license if the person is enrolled in a DWI school and has proof of financial responsibility. .

Laws 2005, ch. 241, § 4 and Laws 2005, ch. 269, § 4 enacted identical amendments to 66-5-35 NMSA 1978. The section was set out as amended by Laws 2005, ch. 269, § 4. *See* 12-1-8 NMSA 1978.

**The 2003 amendment,** effective April 6, 2003, rewrote the section.

**The 2001 amendment,** effective July 1, 2001, in Subsection A, inserted "or to attend a court-ordered treatment program" in the introductory paragraph; in Subsection B, added the Paragraph 3(a) designation, redesignated Paragraph (4) as (3)(b), added Paragraph (3)(c); and added Paragraph C(5).

This section was also amended by Laws 2001, ch. 47, § 1, effective July 1, 2001. The section was set out as amended by Laws 2001, ch. 242, § 1. *See* 12-1-8 NMSA 1978.

**The 1999 amendment,** effective July 1, 1999, in Subsection A inserted "a person's driver's", substituted "department" for "director", inserted "or to attend school", and deleted "for a limited license when the person's license was revoked or suspended pursuant to" at the end of the introductory language, added Paragraph (1), redesignated former Paragraphs (1) and (2) as Paragraphs (2) and (3), in Paragraphs (2) and (3) added "for a limited license when the person's driver's license was revoked pursuant to", added the language beginning "except that" to the end in Paragraph (3), added Paragraph (4); in Subsection B in the introductory language substituted "whose driver's license is" for "who has had his license", inserted the language beginning "or for the second" and ending "Section 66-8-111 NMSA 1978", inserted the language beginning "pays every" and ending "department and" and substituted "department" for "director", in Paragraph (1) substituted the language beginning "a DWI" to the end for "an approved DWI school and an approved alcohol screening program", rewrote Paragraph (3); added Subsections C and D; redesignated former Subsections C through E as Subsections E through G; in Subsection E in the first sentence substituted the language beginning "a fully" and ending "the department" for "the application, proof of financial responsibility for the future and a hearing as provided in Subsection D of this section, the director", deleted "provided that the applicant meets established uniform criteria for limited driving privileges adopted by regulation of the department" at the end of the sentence, and substituted "department" for "division" in the second sentence; rewrote Subsection F; in Subsection G substituted "hearing officer" for "director" in the first sentence, deleted the second sentence which read, "The district court, upon thirty days' written notice to the director, shall hear the case"; and made minor stylistic changes.

**The 1993 amendment,** effective January 1, 1994, inserted "except as provided in Subsection B of this section" in Paragraph (1) of Subsection A; deleted the former second sentence of Paragraph (2) of Subsection A which prohibited issuance of a limited license following a consent decree resulting from a filing of delinquency based on a violation involving driving under the influence of intoxicating liquor or drugs; inserted currrent Subsection B; inserted the subsection designation "C"; substituted "department of health to ensure" for "alcoholism bureau of the health and environment department to insure" in the next to last sentence of Subsection C; redesignated former Subsections B and C as Subsections D and E; deleted "Subection A of" preceding "this section" in the first sentence of Subsection D and in the final sentence of Subsection E; substituted "approving" for "issuing the applicant a limited license or permit to drive" and substituted "any of" for "one or both of" in the next to last and final sentences of Subsection D; and made a minor stylistic change in Subsection C.

**The 1989 amendment,** effective June 16, 1989, in Subsection A inserted "state highway and transportation" in the third and fourth sentences of the undesignated last paragraph.

**Section 66-8-112 NMSA 1978 and this section are not read to preclude application of Section 39-3-1.1** NMSA 1978 allowing appeal of final decisions by agencies to district court. *Dixon v. State Taxation & Revenue Dep't*, 2004-NMCA-044, 135 N.M. 431, 89 P.3d 680.

**Party should file petition for certiorari** when that party is seeking review in the court of appeals of a district court's determination on appeal from a motor vehicles division decision revoking a license or denying a limited license. *Dixon v. State Taxation & Revenue Dep't*, 2004-NMCA-044, 135 N.M. 431, 89 P.3d 680.

**Subsequent offenders excluded.** — As a result of the 1984 amendment, no limited license for gainful employment shall be issued when the applicant's license has been revoked or suspended for an offense occurring after July 1, 1984 for which the applicant is a subsequent offender. *Minero v. Dominguez*, 1985-NMCA-100, 103 N.M. 551, 710 P.2d 745.

**Person is not permitted to operate motor vehicle on basis of documents** in his or her possession which could, upon performance of a ministerial function by a government official, lead to the issuance of a license. An applicant for a limited driving permit who has obtained the required judicial approval and financial responsibility endorsement may not lawfully drive before the limited permit is actually issued. 1980 Op. Att'y Gen. No. 80-21.

**Provision not restricted to first-time convictions.** — There is no indication that Section 64-13-64.1, 1953 Comp. (similar to this section), can be used only in cases of first-time convictions, and in the absence of such legislative declaration it is not to be so restricted. 1972 Op. Att'y Gen. No. 72-48.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Automobiles: necessity or emergency as defense in prosecution for driving without operator's license or while license is suspended, 7 A.L.R.5th 73.

60 C.J.S. Motor Vehicles § 164.46.

## 66-5-36. Right of appeal to court.

A person denied a license or whose license has been canceled, suspended or revoked by the department, except when the cancellation or revocation is mandatory under the provisions of Chapter 66, Article 5 NMSA 1978, may file an appeal in the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

**History:** 1953 Comp., § 64-5-36, enacted by Laws 1978, ch. 35, § 258; 1998, ch. 55, § 78; 1999, ch. 265, § 79.

**ANNOTATIONS**

**Cross references.** — For appeal of final decisions by agencies to district court, *see* 39-3-1.1 NMSA 1978.

For cancellation of minor's licenses, *see* 66-5-12, 66-5-13 NMSA 1978.

For mandatory revocation of license, *see* 66-5-29 NMSA 1978.

For procedures governing administrative appeals to the district court, *see* Rule 1-074 NMRA.

**The 1999 amendment,** effective July 1, 1999, substituted "department" for "division" and "Section 39-3-1.1" for "Section 12-8A-1".

**The 1998 amendment,** effective September 1, 1998, rewrote this section to the extent that a detailed comparison would be impracticable.

**Language of this section applies** to license revocations and denials, whether under the Implied Consent Act or under other statutory authority. *Dixon v. State Taxation & Revenue Dep't*, 2004-NMCA-044, 135 N.M. 431, 89 P.3d 680.

**Sections read together to effect legislative intent.** — Sections 66-8-112 NMSA 1978 and 66-5-35 NMSA 1978 are not read to preclude application of Section 39-3-1.1 NMSA 1978 allowing appeal of final decisions by agencies to district court. *Dixon v. State Taxation & Revenue Dep't*, 2004-NMCA-044, 135 N.M. 431, 89 P.3d 680.

**Court only determines whether grounds for revocation exist.** — The language in Section 64-13-65, 1953 Comp. (similar to this section), "to determine whether the petitioner is entitled to a license or is subject to suspension, cancellation or revocation of license under the provisions of this act" means that it is for the court to determine only whether grounds for suspension, cancellation or revocation exist. *Johnson v. Sanchez*, 1960-NMSC-029, 67 N.M. 41, 351 P.2d 449 (decided under prior law).

**Writ of certiorari.** — Driver's challenge of the revocation of his driver's license by motor vehicle division had to be in the form of a writ of certiorari, since his license was mandatorily revoked due to three DWI convictions and he had no other statutory means of appeal. *Masterman v. State Taxation & Revenue Dep't*, 1998-NMCA-126, 125 N.M. 705, 964 P.2d 869.

**Scope of review.** — On appeals from administrative bodies, the questions to be answered by the court are questions of law and are restricted to whether the administrative body acted fraudulently, arbitrarily or capriciously, whether the order was supported by substantial evidence, and, generally, whether the action of the administrative head was within the scope of his authority. *Johnson v. Sanchez*, 1960-NMSC-029, 67 N.M. 41, 351 P.2d 449.

**Review of mandatory revocation of license.** — Although the Motor Vehicle Code is silent as to any provision expressly authorizing the right to appeal from a mandatory revocation of a driver's license, this omission does not deprive one whose license has been revoked of a right of judicial review by the district court of the administrative action by means of a petition for writ of certiorari. *Littlefield v. State ex rel. Taxation & Revenue*

*Dep't*, 1992-NMCA-083, 114 N.M. 390, 839 P.2d 134, cert. denied, 114 N.M. 123, 835 P.2d 839.

**Jurisdiction of proceeding for restoration of driving privileges.** — Because plaintiffs had never applied for, much less been denied, a driver's license after expiration of the one-year revocation period, they failed to take the mandated administrative steps necessary to vest jurisdiction in the district court of their action seeking restoration of their driving privileges. *Alvarez v. State Taxation and Revenue Dep't*, 1999-NMCA-006, 126 N.M. 490, 971 P.2d 1280.

**Law reviews.** — For article, "Constitutional Limitations on the Exercise of Judicial Functions by Administrative Agencies," see 7 Nat. Resources J. 599 (1972).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 144.

Statute providing for judicial review of administrative order revoking or suspending automobile driver's license as providing for de novo trial, 97 A.L.R.2d 1367.

60 C.J.S. Motor Vehicles § 164.35.

## 66-5-37. Unlawful use of license.

A. It is a misdemeanor for any person to:

(1) display or cause or permit to be displayed or have in the person's possession any canceled, revoked or suspended driver's license;

(2) lend the person's driver's license to any other person or knowingly permit the use of the person's license by another;

(3) permit any unlawful use of the driver's license issued to, or received by, the person;

(4) display or represent as one's own any driver's license not issued to the person; or

(5) do any other act forbidden or fail to perform any other act required by Sections 66-5-1.1 through 66-5-47 NMSA 1978 or the provisions of the New Mexico Commercial Driver's License Act.

B. It is a felony for any person to:

(1) fail or refuse to surrender to the division upon its lawful demand any driver's license that has been suspended, revoked or canceled;

(2) knowingly or willfully provide a false or fictitious name or document in any application for a driver's license or knowingly make a false statement or knowingly conceal a material fact or otherwise commit a fraud in any such application; or

(3) induce or solicit another person or conspire with another person to violate this subsection.

**History:** 1953 Comp., § 64-5-37, enacted by Laws 1978, ch. 35, § 259; 1989, ch. 14, § 22; 2016, ch. 79, § 7; 2019, ch. 167, § 9.

## ANNOTATIONS

**Cross references.** — For use of altered, forged or fictitious license for identification being a misdemeanor, see 66-5-18 NMSA 1978.

For operation of vehicle in violation of restrictions imposed on a restricted license being a misdemeanor, see 66-5-19 NMSA 1978.

For the penalty for misdemeanor, see 66-8-7 NMSA 1978.

**The 2019 amendment,** effective October 1, 2019, removed references to "permit, commercial driver's license or permit or driving authorization card"; in Subsection A, after each occurrence of "license", deleted "permit, commercial driver's license or permit or driving authorization card"; and in Subsection B, after each occurrence of "license", deleted "permit, commercial driver's license or permit or driving authorization card".

**The 2016 amendment,** effective May 18, 2016, established that existing criminal penalties applicable to the unlawful use of a driver’s license are extended to driving authorization cards, and increased the penalties for certain crimes connected to the application, issuance and use of driver’s licenses, ID cards, and driving authorization cards; added new subsection designation "A" and redesignated former Subsections A, B and C as Paragraphs (1), (2) and (4) of Subsection A, respectively; in Subsection A, Paragraph (1), after "displayed or have in", deleted "his" and added "the person’s", after "suspended driver’s license or permit", deleted "or", and after "commercial driver’s license or permit", added "or driving authorization card", in Paragraph (2), after "lend", deleted "his" and added "the person’s", after "driver’s license or permit", deleted "or", after "commercial driver’s license or permit", added "or driving authorization card", after "knowingly permit the use of", deleted "his" and added "the person’s", after "license", deleted "or", and after "permit", added "or driving authorization card", added a new Paragraph (3), in Paragraph (4), after "any driver’s license or permit", deleted "or", after "commercial driver’s license or permit", added "or driving authorization card", and after "not issued to", deleted "him" and added "the person; or", added a new Paragraph (5); added new subsection designation "B" and "It is a felony for any person to:" and designated the language from former Subsection D as Paragraph (1) and the language from former Subsection E as Paragraph (2); in Paragraph (1), after "any driver’s license or permit", deleted "or", and after "commercial driver’s license or permit", deleted

"which" and added "or driving authorization card that", in Paragraph (2), added "knowingly or willfully provide", after "fictitious name", added "or document", and after "commercial driver's license or permit", added "or driving authorization card"; and deleted former Subsections F and G, and added a new Paragraph (3) of Subsection B.

**The 1989 amendment,** effective July 1, 1989, inserted "or commercial driver's license or permit" in Subsections A through F, substituted all of the language of Subsection G following "sections" for "64-5-1 through 64-5-47 NMSA 1953", and made minor stylistic changes throughout the section.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 146, 147.

61A C.J.S. Motor Vehicles §§ 588, 651.

## 66-5-38. Making false affidavit perjury.

Except as otherwise provided in the Motor Vehicle Code, a person who makes a false affidavit or knowingly swears or affirms falsely to a matter or thing required by the terms of the Motor Vehicle Code to be sworn to or affirmed is guilty of perjury as provided in Section 30-25-1 NMSA 1978.

**History:** 1953 Comp., § 64-5-38, enacted by Laws 1978, ch. 35, § 260; 2018, ch. 74, § 39.

**ANNOTATIONS**

**Cross references.** — For perjury being a fourth-degree felony, *see* 30-25-1 NMSA 1978.

**The 2018 amendment,** effective July 1, 2018, provided that making a false affidavit or knowingly swearing or affirming falsely to a matter required by the Motor Vehicle Code is a fourth degree felony, unless otherwise provided in the Motor Vehicle Code; deleted "Any" and added "Except as otherwise provided in the Motor Vehicle Code, a", and after "guilty of perjury", deleted "and upon conviction shall be punishable by fine or imprisonment as other persons committing perjury are punishable" and added "as provided in Section 30-25-1 NMSA 1978".

**Application to law enforcement officers.** — There is no intent by the legislature to exclude law enforcement officers from the term "persons" as that term is used in the statute. *State Transp. Dep't v. Yazzie*, 1991-NMCA-098, 112 N.M. 615, 817 P.2d 1257, cert. denied, 112 N.M. 499, 816 P.2d 1121.

**Statement signed under penalty of perjury.** — An officer was subject to the penalties under this section when he signed a statement seeking to revoke driving privileges. Consequently, the statement was signed under the penalty of perjury and thus met the

requirement of 66-8-111 NMSA 1978. *State Transp. Dep't v. Yazzie*, 1991-NMCA-098, 112 N.M. 615, 817 P.2d 1257, cert. denied, 112 N.M. 499, 816 P.2d 1121.

## 66-5-39. Driving while license suspended; penalties.

A. A person who drives a motor vehicle on any public highway of this state at a time when the person's privilege to do so is suspended and who knows or should have known that the person's license was suspended is guilty of a misdemeanor and may be punished pursuant to Subsection B of Section 66-8-7 NMSA 1978 or for no more than ninety days of participation in a certified alternative sentencing program. When a person pays any or all of the cost of participating in a certified alternative sentencing program, the court may apply that payment as a deduction to any fine imposed by the court. Any municipal ordinance prohibiting driving with a suspended license shall provide penalties no less stringent than provided in this section.

B. In addition to any other penalties imposed pursuant to the provisions of this section, when a person is convicted pursuant to the provisions of this section or a municipal ordinance that prohibits driving on a suspended license, the motor vehicle the person was driving may be immobilized by an immobilization device for thirty days, unless immobilization of the motor vehicle poses an imminent danger to the health, safety or employment of the convicted person's immediate family or the family of the owner of the motor vehicle. The convicted person shall bear the cost of immobilizing the motor vehicle.

**History:** 1953 Comp., § 64-5-39, enacted by Laws 1978, ch. 35, § 261; 1985, ch. 186, § 2; 1987, ch. 97, § 1; 1988, ch. 56, § 7; 1993, ch. 66, § 6; 2013, ch. 163, § 2; 2019, ch. 224, § 2.

**ANNOTATIONS**

**The 2019 amendment,** effective October 1, 2019, revised the penalties for certain motor vehicle code offenses; in Subsection A, after "guilty of a misdemeanor and", deleted "shall be charged with a violation of this section. Upon conviction, the person shall" and added "may", after "may be punished", deleted "notwithstanding the provisions of Section 31-18-13 NMSA 1978, by imprisonment for not less than four days or more than three hundred sixty-four days or participation for an equivalent period of time" and added "pursuant to Subsection B of Section 66-8-7 NMSA 1978 or for no more than ninety days of participation", and after "alternative sentencing program", deleted "and there may be imposed in addition a fine of not more than one thousand dollars ($1,000)"; and deleted former Subsection C.

**The 2013 amendment,** effective July 1, 2013, provided for the suspension of driver’s licenses; in the title, after "suspended", deleted "or revoked; providing"; in Subsection A, in the first sentence, after "to do so is suspended", deleted "or revoked" and after "license was suspended", deleted "or revoked", deleted the former fourth and fifth sentences, which provided penalties when a driver’s license was revoked for driving

while under the influence of intoxicating liquors or drugs or a violation of the Implied Consent Act, and in the sixth sentence, after "driving with a suspended", deleted "or revoked"; in Subsection B, in the first sentence, after "driving on a suspended", deleted "or revoked" and after "person was driving", deleted "shall" and added "may"; and in Subsection C, after "under this section", deleted "upon a charge of driving a vehicle while a license was revoked, the division shall not issue a new license for an additional period of one year from the date the person would otherwise have been entitled to apply for a new license".

**The 1993 amendment,** effective January 1, 1994, inserted "and who knows or should have known that his license was suspended or revoked" in the first sentence of Subsection A; substituted the language beginning "four days or more" for "two days nor more than six months, and there may be imposed in addition a fine of not more than five hundred dollars ($500)" at the end of the second sentence in Subsection A; inserted the current third sentence in Subsection A; substituted "seven consecutive days" for "ninety-six consecutive hours" and inserted "or not more than one thousand dollars ($1,000)" in the fourth sentence of Subsection A; inserted current Subsection B; and redesignated former Subsection B as Subsection C.

**The 1988 amendment,** effective July 1, 1988, in Subsection A, inserted "shall be charged with a violation of this section" in the first sentence, inserted "the person" in the second sentence, and substituted the present language at the end of Subsection A beginning with "or a violation of the Implied Consent Act" for the former language which read "upon conviction that person shall be fined not less than one hundred fifty dollars ($150) which shall not be suspended, deferred or taken under advisement".

**Proof of knowledge** by the licensee that his driving privileges have been suspended or revoked is a prerequisite for conviction under the statute. *State v. Herrera*, 1991-NMCA-005, 111 N.M. 560, 807 P.2d 744, cert. denied, 111 N.M. 529, 807 P.2d 227.

**Proof of notice.** — Defendant's conviction of driving on a revoked license was reversed where the trial court failed to instruct the jury that the state had the burden of proving that defendant knew or should have known that her license was revoked at the time that she was arrested and the state had not, in fact, proved that the defendant had been given a notice of revocation. *State v. Castro*, 2002-NMCA-093, 132 N.M. 646, 53 P.3d 413, cert. denied, 132 N.M. 551, 52 P.3d 411.

**When misdemeanor arrest without warrant justified.** — Where a police officer testified that he knew that the defendant "was on revocation" and that he stopped the defendant "to check his driving privileges," the arresting officer was justified in making the arrest without a warrant for a misdemeanor (driving with a revoked license) committed in his presence. *State v. Gutierrez*, 1966-NMSC-119, 76 N.M. 429, 415 P.2d 552.

**Sufficiency of evidence of notice.** — Record supported a finding that defendant was aware that he was driving with a revoked license, where two separate notices of

revocation were sent by certified mail to his home address after defendant received separate convictions of driving while under the influence of alcohol, and both notices were unreturned. *State v. Herrera*, 1991-NMCA-005, 111 N.M. 560, 807 P.2d 744, cert. denied, 111 N.M. 529, 807 P.2d 227.

**Section subject to assimilation under federal law.** — The offenses described by this section (driving while license suspended), Sections 66-8-102 NMSA 1978 (driving while under the influence) and 66-7-3 NMSA 1978 (violation of traffic laws) are all criminal offenses, and, as such, the applicable sentences are assimilated for offenses committed on military installations within the state under the Assimilative Crimes Act, 18 U.S.C. § 13. *United States v. Adams*, 140 F.3d 895 (10th Cir.), cert. denied, 525 U.S. 895, 119 S. Ct. 219, 142 L. Ed. 2d 180 (1998).

**Sentence mandatory.** — The jail sentence provided under Section 64-13-68, 1953 Comp. (similar to this section), is mandatory. 1960 Op. Att'y Gen. No. 60-95.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 148.

Lack of proper automobile registration or operator's license as evidence of operator's negligence, 29 A.L.R.2d 963.

Necessity or emergency as defense in prosecution for driving without operator's license, or while license is suspended, 61 A.L.R.3d 1041.

Automobiles: Necessity or emergency as defense in prosecution for driving without operator's license or while license is suspended, 7 A.L.R.5th 73.

61A C.J.S. Motor Vehicles §§ 639(1), 639(2).

## 66-5-39.1. Driving while license revoked; penalties.

A. A person who drives a motor vehicle on a public highway of this state at a time when the person's privilege to do so is revoked and who knows or should have known that the person's license was revoked is guilty of a misdemeanor and shall be charged with a violation of this section. Upon conviction, the person shall be punished, notwithstanding the provisions of Section 31-18-13 NMSA 1978, by imprisonment for not less than four days or more than three hundred sixty-four days or by participation for an equivalent period of time in a certified alternative sentencing program, and there may be imposed in addition a fine of not more than one thousand dollars ($1,000). When a person pays any or all of the cost of participating in a certified alternative sentencing program, the court may apply that payment as a deduction to any fine imposed by the court.

B. Notwithstanding any other provision of law for suspension or deferment of execution of a sentence, if the person's privilege to drive was revoked for driving under

the influence of intoxicating liquor or drugs or a violation of the Implied Consent Act [66-8-105 to 66-8-112 NMSA 1978], upon conviction pursuant to this section, the person shall be punished by imprisonment for not less than seven consecutive days and shall be fined not less than three hundred dollars ($300) and not more than one thousand dollars ($1,000) and the fine and imprisonment shall not be suspended, deferred or taken under advisement. No other disposition by plea of guilty to any other charge in satisfaction of a charge under this section shall be authorized if the person's privilege to drive was revoked for driving under the influence of intoxicating liquor or drugs or a violation of the Implied Consent Act. Any municipal ordinance prohibiting driving with a revoked license shall provide penalties no less stringent than provided in this section.

C. In addition to any other penalties imposed pursuant to this section, when a person is convicted pursuant to the provisions of this section or a municipal ordinance that prohibits driving on a revoked license, the motor vehicle the person was driving shall be immobilized by an immobilization device for thirty days, unless immobilization of the motor vehicle poses an imminent danger to the health, safety or employment of the convicted person's immediate family or the family of the owner of the motor vehicle. The convicted person shall bear the cost of immobilizing the motor vehicle.

D. The division, upon receiving a record of the conviction of any person under this section, shall not issue a new license for an additional period of one year from the date the person would otherwise have been entitled to apply for a new license.

**History:** 1978 Comp., § 66-5-39.1, enacted by Laws 2013, ch. 163, § 3.

**ANNOTATIONS**

**Effective dates.** — Laws 2013, ch. 163, § 4 made Laws 2013, ch. 163, § 3 effective July 1, 2013.

## 66-5-39.2. Driving while license administratively suspended.

A person who drives a motor vehicle on any public highway of this state at a time when the person's privilege to do so is administratively suspended is guilty of a penalty assessment misdemeanor and may be punished in accordance with the provisions of Section 66-8-116 NMSA 1978.

**History:** 1978 Comp., § 66-5-39.2, enacted by Laws 2019, ch. 224, § 3.

**ANNOTATIONS**

**Effective dates.** — Laws 2019, ch. 224, §6 made Laws 2019, ch. 224 effective October 1, 2019.

## 66-5-40. Permitting unauthorized minor to drive.

No person shall cause or knowingly permit his child or ward under the age of eighteen years to drive a motor vehicle upon any highway when such minor is not authorized hereunder or is in violation of any of the provisions of this article.

**History:** 1953 Comp., § 64-5-40, enacted by Laws 1978, ch. 35, § 262.

**ANNOTATIONS**

**Cross references.** — For the penalty assessment for violation of this section, *see* 66-8-116 NMSA 1978.

For offenses by persons owning or controlling vehicles, *see* 66-8-121 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 149.

61A C.J.S. Motor Vehicles § 687.

## 66-5-41. Permitting unauthorized person to drive.

No person shall authorize or knowingly permit a motor vehicle owned by him or under his control to be driven upon any highway by any person who is not authorized hereunder or is in violation of any of the provisions of this article.

**History:** 1953 Comp., § 64-5-41, enacted by Laws 1978, ch. 35, § 263.

**ANNOTATIONS**

**Cross references.** — For offenses by persons owning or controlling vehicles, *see* 66-8-121 NMSA 1978.

**Negligent entrustment claim.** — To prevail on a negligent entrustment claim, a plaintiff must show that the defendant entrusted the vehicle to the plaintiff when defendant knew or should have known plaintiff was an incompetent driver, and plaintiff's incompetence caused the injury. Entrustment, or permission to use the vehicle, can either be express or implied. Implied permission to use a motor vehicle can be inferred from a course of conduct or relationship between the parties, or other facts and circumstances signifying the assent of the owner. *Armenta v. A.S. Horner, Inc.*, 2015-NMCA-092, cert. granted, 2015-NMCERT-008.

Where worker, on a work-related trip in Springer, New Mexico, had been allowed to drive employer's vehicle after work hours to pick up food and alcohol for an employees' dinner, but after dinner was told by his supervisor to drink moderately and to not leave the motel, worker, despite the warning, left the motel in employer's vehicle and headed to Raton to continue partying. Worker was killed in an accident just north of Springer. Worker's blood alcohol concentration was .23 at the time of his death. The district court

erred in granting employer's motion for summary judgment where there was a genuine issue of material fact as to whether worker had implied permission to drive employer's vehicle the night of the accident when worker's superiors knew that worker had the car keys and had been driving the vehicle throughout the week, including that night, and when the supervisor knew that worker had been drinking beer that night. *Armenta v. A.S. Horner, Inc.*, 2015-NMCA-092, cert. granted, 2015-NMCERT-008.

**Negligent entrustment claim when the driver is intoxicated.** — A suit brought by an injured entrustee against his entrustor is a viable cause of action in a comparative negligence jurisdiction. Comparative negligence provides the appropriate framework for examining any negligence on the part of the individual who drives after consuming alcoholic beverages. Provided that the elements of negligent entrustment are proven, an entrustee may state a claim for simple negligent entrustment against the entrustor when the entrustee's voluntary intoxication causes injury. *Armenta v. A.S. Horner, Inc.*, 2015-NMCA-092, cert. granted, 2015-NMCERT-008.

Where worker, on a work-related trip in Springer, New Mexico, had been allowed to drive employer's vehicle after work hours to pick up food and alcohol for an employees' dinner, but after dinner was told by his supervisor to drink moderately and to not leave the motel, worker, despite the warning, left the motel in employer's vehicle and headed to Raton to continue partying. Worker was killed in an accident just north of Springer. Worker's blood alcohol concentration was .23 at the time of his death. The district court erred in granting employer's motion for summary judgment because an adult drunk driver who injures himself is entitled to a comparative fault trial predicated on the theory of negligent entrustment. *Armenta v. A.S. Horner, Inc.*, 2015-NMCA-092, cert. granted, 2015-NMCERT-008.

**"Authorize or knowingly permit"** means "know or should have known." *Spencer v. Gamboa*, 1985-NMCA-033, 102 N.M. 692, 699 P.2d 623.

**When section violated.** — Section imposes no affirmative duty on owner to ascertain the qualifications of borrower to drive the car; rather, an owner violates this section only if he knows or should know that the borrower is not qualified to drive the car. *Equitable Gen. Ins. Co. v. Silva*, 1983-NMCA-002, 99 N.M. 371, 658 P.2d 446, cert. denied, 99 N.M. 358, 658 P.2d 433; *Spencer v. Gamboa*, 1985-NMCA-033, 102 N.M. 692, 699 P.2d 623.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 149.

Construction, application, and effect of legislation making it offense to permit unauthorized or unlicensed person to operate motor vehicle, 69 A.L.R.2d 978.

61A C.J.S. Motor Vehicles § 687.

## 66-5-42. Employing unlicensed driver.

No person shall employ as a driver of a motor vehicle any person not licensed as provided in this article.

**History:** 1953 Comp., § 64-5-42, enacted by Laws 1978, ch. 35, § 264.

**ANNOTATIONS**

**Cross references.** — For offenses by persons owning or controlling vehicles, *see* 66-8-121 NMSA 1978.

**Duty to the motoring public.** — This section expresses the public policy that an employer has a duty to the motoring public to use due care in the hiring and retention of employees who operate vehicles in the scope of their employment. *Lessard v. Coronado Paint & Decorating Ctr., Inc.*, 2007-NMCA-122, 142 N.M. 583, 168 P.3d 155, cert. granted, 2007-NMCERT-009, 142 N.M. 715, 169 P.3d 408.

## 66-5-43. Renting motor vehicles to unlicensed drivers and minors; exception; record.

A. No person shall rent a motor vehicle to any other person unless the latter person is then duly licensed hereunder or, in the case of a nonresident, then duly licensed under the laws of the state or country of his residence except a nonresident whose home state or country does not require that a driver be licensed.

B. No person shall rent a motor vehicle to another until he has inspected the driver's license of the person to whom the vehicle is to be rented, and has compared and verified the signature thereon with the signature of such person written in his presence.

C. Every person renting a motor vehicle to another shall keep a record of the registration number of the motor vehicle so rented, the name and address of the person to whom the vehicle is rented, the number of the license of said latter person and the date and place when and where said license was issued. Such record shall be open to inspection by any police officer or officer or employee of the division.

D. It is unlawful to rent a motor vehicle to any person who is under the age of eighteen years unless such person shall furnish and leave with the person renting out the motor veicle [vehicle] a statement in writing showing the consent of the parent or guardian to the rent [rental] of a motor vehicle by the said owner [minor].

**History:** 1953 Comp., § 64-5-43, enacted by Laws 1978, ch. 35, § 265.

**ANNOTATIONS**

**Cross references.** — For the general police authority of the division of motor vehicles, *see* 66-2-12 NMSA 1978.

**Bracketed material.** — The bracketed material was inserted by the compiler and it is not part of the law.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Criminal liability in connection with rental of motor vehicles, 38 A.L.R.3d 949.

Construction and application of statute imposing liability expressly upon motor vehicle lessor for damages caused by operation of vehicle, 41 A.L.R.4th 993.

State regulation of motor vehicle rental ("you-drive") business, 60 A.L.R.4th 784.

## 66-5-44. Licenses and permits; duration and fee; appropriation.

A. There shall be paid to the department a fee of ten dollars ($10.00) for each driver's license or duplicate driver's license, except that for a driver's license issued for an eight-year period, a fee of twenty dollars ($20.00) shall be paid to the department. Each license shall be for a term provided for in Section 66-5-21 NMSA 1978.

B. For each permit and instruction permit, there shall be paid to the department a fee of two dollars ($2.00). The term for each permit shall be as provided in Sections 66-5-8 and 66-5-9 NMSA 1978.

C. Except for fees charged pursuant to Subsection E of this section, the director with the approval of the governor may increase the amount of the fees provided for in this section by an amount not to exceed three dollars ($3.00) for the purpose of implementing an enhanced driver's license system; provided that for a driver's license issued for an eight-year period, the amount of the fees shall be twice the amount charged for other driver's licenses. The additional amounts collected pursuant to this subsection are appropriated to the department to defray the expense of the new system of licensing and for use as set forth in Subsection F of Section 66-6-13 NMSA 1978. Unexpended or unencumbered balances remaining from fees collected pursuant to the provisions of this subsection at the end of any fiscal year shall not revert to the general fund but shall be expended by the department in fiscal year 2010 and subsequent fiscal years.

D. There shall be paid to the department a driver safety fee of three dollars ($3.00) for each driver's license or duplicate driver's license, except that for a driver's license issued for an eight-year period, a fee of six dollars ($6.00) shall be paid to the department. The fee shall be distributed to each school district for the purpose of providing defensive driving instruction through the state equalization guarantee distribution made annually pursuant to the general appropriation act.

E. The department may charge a fee of no more than fifteen dollars ($15.00) to a person who holds a driver's license from another state and is applying for a New Mexico driver's license for the first time. The fee is appropriated to the department to defray the expense of determining whether the driver has been convicted of driving a motor vehicle

while under the influence of intoxicating liquor or drugs, or equivalent crime, and determining if the person qualifies for a driver's license in this state. The fee provided in this subsection is not subject to the increase provided for in Subsection C of this section.

**History:** 1953 Comp., § 64-5-44, enacted by Laws 1978, ch. 35, § 266; 1984, ch. 83, § 1; 1985, ch. 66, § 2; 1987, ch. 278, § 1; 1993, ch. 68, § 42; 1999, ch. 222, § 2; 2007, ch. 317, § 2; 2009, ch. 156, § 3.

**ANNOTATIONS**

**Cross references.** — For authority of division to classify licenses, *see* 66-5-7 NMSA 1978.

For expiration and renewal of license, *see* 66-5-21 NMSA 1978.

**The 2009 amendment,** effective July 1, 2009, in Subsection C, at the beginning of the first sentence, added "Except for fees charged pursuant to Subsection E of this section" and in the second sentence, after "new system of licensing", added the remainder of the sentence and added the last sentence.

**The 2007 amendment,** effective July 1, 2007, adds Subsection E that provides for a fee of $15.00 to issue a license to a driver who holds a license in another state.

**The 1999 amendment,** effective July 1, 1999, in Subsections A, B, C, and D, substituted "department" for "division", in Subsection A, inserted "except that for a driver's license issued for an eight-year period, a fee of twenty dollars ($20.00) shall be paid to the department" in the first sentence; and in Subsection C, inserted "provided that for a driver's license issued for an eight-year period, the amount of the fees shall be twice the amount charged for other driver's licenses" in the first sentence; and in Subsection D, inserted "except that for a driver's license issued for an eight-year period, a fee of six dollars ($6.00) shall be paid to the department" in the first sentence.

**The 1993 amendment,** effective July 1, 1993, added Subsection D.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 60 C.J.S. Motor Vehicles § 158.

## 66-5-44.1. Provisional licenses; duration and fee; appropriation.

A. There shall be paid to the division a fee of thirteen dollars ($13.00) for each provisional license or duplicate provisional license. Each provisional license shall be for a term provided for in Section 66-5-21 NMSA 1978.

B. The director with the approval of the governor may increase the amount of the fee provided for in this section by an amount not to exceed three dollars ($3.00) for the purpose of implementing an enhanced driver's license system. The additional amounts

collected pursuant to this subsection are appropriated to the division to defray the expense of the new system of licensing.

C. The fees collected pursuant to the provisions of Subsection A of this section are appropriated to the division to defray the expense of implementing the new system of provisional licensing.

**History:** 1978 Comp., § 66-5-44.1, enacted by Laws 1999, ch. 175, § 11.

## 66-5-45. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 66, § 4 repealed 66-5-45 NMSA 1978, as enacted by Laws 1978, ch. 35, § 267, relating to duplicate licenses and permits, effective July 1, 1985. For present provisions on fees for duplicate drivers' licenses, *see* 66-5-44 NMSA 1978.

## 66-5-46. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1990, ch. 120, § 44 repealed 66-5-46 NMSA 1978, as enacted by Laws 1978, ch. 35, § 268, relating to deposit of collections with state treasurer, effective July 1, 1990. For provisions of former section, *see* the 1989 NMSA 1978 on *NMOneSource.com.*

## 66-5-47. Photographs.

The department shall reproduce the likeness of drivers, subject to the following conditions:

A. photographs or other reproductions of the likeness of all persons shall be a full-face or front-view digital photograph; and

B. photographs or other reproductions of the likeness of all persons under the age of twenty-one years shall have a printed legend, indicating that the person is under twenty-one, which shall be displayed in such manner as to be easily read by any person inspecting the license.

**History:** 1953 Comp., § 64-5-47, enacted by Laws 1978, ch. 35, § 269; 1989, ch. 318, § 17; 1990, ch. 120, § 28; 1999, ch. 76, § 2; 2016, ch. 79, § 8.

**ANNOTATIONS**

**Cross references.** — For other information required to be included on the license, *see* 66-5-15 NMSA 1978.

For definition of "municipality" including H-class counties, *see* 3-1-2 NMSA 1978.

For establishment of H-class counties, *see* 4-44-3 NMSA 1978.

**The 2016 amendment,** effective May 18, 2016, removed the requirement that each applicant for a license provide proof of age; in the catchline, after "photographs", deleted "evidence of applicant's age"; deleted the subsection designation "A" and redesignated former Paragraphs (1) and (2) of Subsection A as new Subsections A and B, respectively; in Subsection A, after "the likeness of all persons shall", deleted "show" and added "be", after "a", deleted "full face" and added "full-face", and after "or", deleted "front view" and added "front-view digital photograph"; and deleted former Subsection B.

**The 1999 amendment,** effective July 1, 1999, substituted "department" for "division" in the introductory language of Subsection A and in the last sentence of Subsection B; in Subsection B, inserted "or a replacement license" in the first sentence, and in the second sentence, inserted "certified", inserted "a valid passport", and substituted "secretary" for "director".

**The 1990 amendment,** effective July 1, 1990, deleted "Distribution of license fees" in the catchline, deleted former Subsections A and D to G, relating to the distribution of license fees, redesignated former Subsections B and C as present Subsections A and B and made a minor stylistic change.

**The 1989 amendment,** effective July 1, 1989, substituted "Subsection A of Section 66-5-44 NMSA 1978" for "Section 64-5-44A NMSA 1953" in Subsections A, D and F; substituted "reproduce the likeness of" for "photograph" in the introductory paragraph of Subsection B; inserted "or other reproductions of the likeness" in Subsections B(1) and B(2); made minor stylistic changes in Subsection C; in Subsection F substituted "66-6-23 NMSA 1978" for "64-6-23 NMSA 1953" at the end of the first sentence; and in Subsection G substituted "motorcycle" for "motor-driven cycle" in the first sentence.

## 66-5-48. Uniformity of interpretation.

This article shall be so interpreted and construed as to effectuate its general purpose to make uniform the laws of those states which enact it.

**History:** 1953 Comp., § 64-5-48, enacted by Laws 1978, ch. 35, § 270.

## 66-5-49. Driver License Compact enacted.

The Driver License Compact is entered into with all other jurisdictions legally joining therein in a form substantially as follows:

DRIVER LICENSE COMPACT

ARTICLE I

## Findings and Declaration of Policy

A. The party states find that:

(1) the safety of their streets and highways is materially affected by the degree of compliance with state laws and local ordinances relating to the operation of motor vehicles;

(2) violation of state law or local ordinance is evidence that the violator engages in conduct which is likely to endanger the safety of persons and property; and

(3) continuance in force of a license to drive is predicated upon compliance with laws and ordinances relating to the operation of motor vehicles, in whichever jurisdiction the vehicle is operated.

B. It is the policy of each of the party states to:

(1) promote compliance with the laws, ordinances and administrative rules and regulations relating to the operation of motor vehicles by their operators in each of the jurisdictions where they drive motor vehicles; and

(2) make the reciprocal recognition of licenses to drive and eligibility therefor more just and equitable by considering the overall compliance with motor vehicle laws, ordinances and administrative rules and regulations as a condition precedent to the continuation or issuance of any license by reason of which the licensee is authorized or permitted to operate a motor vehicle in any of the party states.

## ARTICLE II

## Definitions

As used in the Driver License Compact:

A. "state" means a state, territory or possession of the United States, the District of Columbia or the commonwealth of Puerto Rico;

B. "home state" means the state which has issued, and has the power to suspend or revoke the use of, the license or permit to operate a motor vehicle; and

C. "conviction" means a conviction of any offense related to the use or operation of a motor vehicle which is prohibited by state law, municipal ordinance or administrative rule or regulation, or a forfeiture of bail, bond or other security deposited to secure appearance by a person charged with having committed any such offense, and which conviction or forfeiture is required to be reported to the licensing authority.

## ARTICLE III

## Reports of Conviction

The licensing authority of a party state shall report each conviction of a person from another party state occurring within its jurisdiction to the licensing authority of the home state of the licensee. The report shall:

A. clearly identify the person convicted;

B. describe the violation, specifying the section of the statute, code or ordinance violated;

C. identify the court in which action was taken;

D. indicate whether a plea of guilty or not guilty was entered, or the conviction was a result of the forfeiture of bail, bond or other security; and

E. include any special findings made in connection therewith.

## ARTICLE IV

## Effect of Conviction

A. The licensing authority in the home state, for the purposes of suspension, revocation or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported pursuant to Article III of the Driver License Compact as it would if the conduct had occurred in the home state in the case of convictions for:

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

(2) driving a motor vehicle under the influence of intoxicating liquor or a narcotic drug, or under the influence of any other drug to a degree which renders the driver incapable of safely driving a motor vehicle;

(3) any felony in the commission of which a motor vehicle is used; and

(4) failure to stop and render aid in the event of a motor vehicle accident resulting in the death or personal injury to another.

B. As to other convictions reported pursuant to Article III, the licensing authority in the home state shall give the effect to the conduct as is provided by the laws of the home state.

C. If the laws of a party state do not provide for offenses or violations denominated or described in precisely the words employed in Subsection A of this article, that party state shall construe the denominations and descriptions appearing in Subsection A as

being applicable to, and identifying, those offenses or violations of a substantially similar nature, and the laws of that party state shall contain provisions necessary to ensure that full effect is given to this article.

## ARTICLE V

### Applications for New Licenses

Upon application for a license to drive, the licensing authority in a party state shall ascertain whether the applicant has ever held, or is the holder of, a license to drive issued by any other party state. The licensing authority in the state where application is made shall not issue a license to drive to the applicant if:

A. the applicant has held a license, but it has been suspended by reason, in whole or in part, of a violation and if the suspension period has not terminated;

B. the applicant has held a license, but it has been revoked by reason, in whole or in part, of a violation and if the revocation has not terminated, except that after expiration of one year from the date the license was revoked, the person may make application for a new license if permitted by law. The licensing authority may refuse to issue a license to the applicant if, after investigation, it determines that it will not be safe to grant to the person the privilege of driving a motor vehicle on the public highways; or

C. the applicant is the holder of a license to drive issued by another party state and currently in force, unless he surrenders the license.

## ARTICLE VI

### Applicability of Other Laws

Except as expressly required by provisions of the Driver License Compact, nothing contained in the compact shall be construed to affect the right of any party state to apply any of its other laws relating to licenses to drive to any person or circumstances, or to invalidate or prevent any driver license agreement or other cooperative arrangement between a party state and a nonparty state.

## ARTICLE VII

### Compact Administrator and Interchange of Information

A. The head of the licensing authority of each party state shall be the administrator of the Driver License Compact for his state. The administrators, acting jointly, may formulate all necessary and proper procedures for the exchange of information under the Driver License Compact.

B. The administrator of each party state shall furnish to the administrator of each other party state any information or documents reasonably necessary to facilitate the administration of the Driver License Compact.

ARTICLE VIII

Entry into Force and Withdrawal

A. The Driver License Compact shall enter into force and become effective as to any state when it has enacted the compact into law.

B. Any party state may withdraw from the Driver License Compact by enacting a statute repealing the compact, but no withdrawal shall take effect until six months after the executive head of the withdrawing state has given notice of the withdrawal to the executive heads of all other party states. No withdrawal shall affect the validity or applicability by the licensing authorities of states remaining party to the compact of any report of conviction occurring prior to the withdrawal.

ARTICLE IX

Construction and Severability

The Driver License Compact shall be liberally construed to effectuate its purposes. The provisions of the compact are severable and if any phrase, clause, sentence or provision is declared to be contrary to the constitution of any party state, or of the United States, or its applicability to any government, agency, person or circumstance is held invalid, the validity or [of] the remainder of the compact and its applicability to any government, agency, person or circumstance shall not be affected. If the compact is held contrary to the constitution of any party state, it shall remain in full effect as to the state affected as to all severable matters.

**History:** 1953 Comp., § 64-13-79, enacted by Laws 1963, ch. 302, § 1; recompiled as 1953 Comp., § 64-5-49, by Laws 1978, ch. 35, § 271.

**ANNOTATIONS**

**Cross references.** — For driver's records from another state, *see* 66-5-9 NMSA 1978.

For suspending privileges of nonresidents and reporting convictions, *see* 66-5-25 NMSA 1978.

For suspending resident's license upon conviction in another state, *see* 66-5-26 NMSA 1978.

**Nonresident must surrender license upon applying for state license.** — Under the provisions of Section 64-13-38, 1953 Comp. (similar to Section 66-5-2 NMSA 1978) and

this section, a person possessing a valid nonresident operator's or chauffeur's license must surrender it upon applying for a New Mexico operator's or chauffeur's license, or file an affidavit with the department of motor vehicles (now motor vehicle division) that he does not possess an operator's or chauffeur's license. 1964 Op. Att'y Gen. No. 64-145.

## 66-5-50. Driver License Compact; definitions; cooperation.

As used in the Driver License Compact with reference to this state:

A. "licensing authority" means the director. The director shall furnish to the appropriate authorities of any other party state any information or documents reasonably necessary to facilitate the administration of Articles III, IV and V of the compact; and

B. "executive head" means the governor.

**History:** 1953 Comp., § 64-5-50, enacted by Laws 1978, ch. 35, § 272; 1987, ch. 268, § 25.

## 66-5-51. Compensation of compact administrator.

The director is not entitled to any additional compensation because of his services as compact administrator under Article VII of the Driver License Compact, Section 66-5-49 NMSA 1978 but may be reimbursed per diem and mileage expenses in accordance with the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

**History:** 1953 Comp., § 64-5-51, enacted by Laws 1978, ch. 35, § 273; 1987, ch. 268, § 26.

# PART 1A
# COMMERCIAL DRIVERS' LICENSES

## 66-5-52. Short title.

Sections 66-5-52 through 66-5-72 NMSA 1978 may be cited as the "New Mexico Commercial Driver's License Act".

**History:** Laws 1989, ch. 14, § 1; 1992, ch. 13, § 2; 2000, ch. 71, § 1; 2003, ch. 51, § 1.

**ANNOTATIONS**

**The 2003 amendment,** effective March 19, 2003, substituted "66-5-72" for "66-5-71".

**The 2000 amendment,** effective May 17, 2000, substituted "66-5-71" for "66-5-70".

**The 1992 amendment,** effective April 1, 1992, substituted "Sections 66-5-52 through 66-5-70 NMSA 1978" for "Sections 1 through 19 of this act".

## 66-5-53. Purpose.

The purpose of the New Mexico Commercial Driver's License Act is to:

A. improve commercial driver quality;

B. remove problem commercial drivers from New Mexico's highways; and

C. establish a system that will prevent operators of commercial motor vehicles from having more than one driver's license.

**History:** Laws 1989, ch. 14, § 2.

## 66-5-54. Definitions.

As used in the New Mexico Commercial Driver's License Act:

A. "commerce" means:

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

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

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

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

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

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

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

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

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

E. "conviction" means:

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

(a) a court of original jurisdiction; or

(b) an authorized administrative tribunal;

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

(3) a plea of guilty or nolo contendere accepted by the court;

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

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

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

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

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

G. "disqualification" means:

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

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

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

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

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

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

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

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

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

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

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

M. "gross combination weight rating" means the value specified by the manufacturer as the loaded weight of a combination vehicle. In the absence of a value specified by the manufacturer, gross combination weight rating shall be determined by adding the gross vehicle weight rating of the power unit and the total weight of the towed unit or units and any load thereon;

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

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

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

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

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

S. "railroad-highway grade crossing violation" means a violation of a provision of Section 66-7-341 or 66-7-343 NMSA 1978 or a violation of federal or local law, ordinance or rule pertaining to stopping at or crossing a railroad-highway grade crossing;

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

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

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

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

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

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

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

(7) following another vehicle too closely in violation of Section 66-7-318 NMSA 1978;

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

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

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

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

(12) driving a commercial motor vehicle without the proper class of commercial driver's license and endorsements pursuant to Section 66-5-65 NMSA 1978 and the Motor Carrier Safety Act [65-3-1 to 65-3-14 NMSA 1978] for the specific vehicle group operated or for the passengers or type of cargo transported; or

(13) driving a commercial motor vehicle without obtaining a commercial driver's license in violation of Section 66-5-59 NMSA 1978; and

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

**History:** Laws 1989, ch. 14, § 3; 1990, ch. 120, § 29; 1992, ch. 13, § 3; 1998, ch. 17, § 1; 2003, ch. 51, § 2; 2004, ch. 59, § 16; 2005, ch. 312, § 2; 2007, ch. 321, § 4; 2009, ch. 200, § 4; 2016, ch. 63, § 2.

## ANNOTATIONS

**Cross references.** — For the federal Commercial Motor Vehicle Safety Act of 1986, *see* 49 U.S.C. § 31301.

**The 2016 amendment,** effective May 18, 2016, made "texting while driving" and "use of a handheld mobile communication device while driving a commercial vehicle" serious traffic violations for purposes of the New Mexico Commercial Driver’s License Act; in Subsection D, Paragraph (4), after "materials, as", deleted "hazardous materials are defined" and added "provided"; in Subsection S, after "local law", added "ordinance"; and in Subsection T, added new Paragraphs (8) and (9) and redesignated the succeeding paragraphs accordingly.

**The 2009 amendment,** effective July 1, 2009, added Subsections B and E; and in Paragraph (4) of Subsection D, after "hazardous materials", deleted "which requires the motor vehicle to be placarded under applicable law" and added "hazardous materials are defined in 49 C.F.R. part 383.5".

**The 2007 amendment,** effective April 2, 2007, added Subsection S.

**The 2005 amendment,** effective July 1, 2005, in Subsection B, added the definition of "commercial driver's license information system"; in Subsection D, added the definition of "director"; and in Subsection G, added the definition of "division".

**The 2004 amendment,** effective March 4, 2004, added Subsections C and D, redesignated Subsections C and D as Subsections E and F, added Subsection G, redesignated Subsections E and F as Subsections H and I, added Subsections J, K and L, redesignated Subsections G, H and I as Subsections M, N and O and added to Subsection O Paragraphs (6) to (11).

**The 2003 amendment,** effective March 19, 2003, inserted Subsection H and redesignated former Subsection H as present Subsection I; and substituted "'Serious traffic violation' does not include" for "A serious traffic violation does not include" preceding "vehicle weight" in present Subsection I(5).

**The 1998 amendment,** effective May 20, 1998, rewrote this section to the extent that a detailed comparison would be impracticable.

**The 1992 amendment,** effective April 1, 1992, substituted "fifteen" for "twenty-six" in Subsection C(1), substituted "reckless driving" for "reckless or careless driving" and "Section 66-8-113" for "Sections 66-8-113 and 66-8-114" in Subsection C(2), and substituted "that" for "which" in Subsection C(5).

**The 1990 amendment,** effective July 1, 1990, deleted former Subsections A to H, J to M, O, Q, and R which contained certain definitions, redesignated former Subsections I, N, and P as present Subsections A, B, and C, and made minor stylistic changes.

## 66-5-55. Driver's licenses; limitation of number.

As of the effective date of the New Mexico Commercial Driver's License Act, no person who drives a commercial motor vehicle may have more than one driver's license.

**History:** Laws 1989, ch. 14, § 4.

**ANNOTATIONS**

**Compiler's notes.** — The effective date of the New Mexico Commercial Driver's License Act is July 1, 1989, the effective date of Laws 1989, Chapter 14.

## 66-5-56. Notification by driver to the division.

Any driver of a commercial motor vehicle holding a New Mexico driver's license who is convicted of violating any state law or local ordinance relating to motor vehicle traffic control in any other state, other than parking violations, shall notify the division, in the manner specified in a regulation adopted by the secretary, within thirty days of the date of conviction.

**History:** Laws 1989, ch. 14, § 5.

## 66-5-57. Notification by driver to employer.

A. Any driver of a commercial motor vehicle holding a New Mexico driver's license who is convicted of violating any state law or local ordinance relating to motor vehicle traffic control in this or any other state, other than parking violations, shall notify in writing his employer of the conviction within thirty days of the date of conviction.

B. Any driver whose driver's license is suspended, revoked or canceled by any state, or who loses the privilege to drive a commercial motor vehicle in any state for any period, shall notify his employer of that fact before the end of the business day following the day the driver received notice of the fact.

**History:** Laws 1989, ch. 14, § 6.

## 66-5-58. Employer responsibility.

It is unlawful for an employer to knowingly allow, require, permit or authorize a driver to drive a commercial motor vehicle during a period in which:

A. the driver has a driver's license suspended, revoked or canceled by a state, has lost the privilege to drive a commercial motor vehicle in a state or has been disqualified from driving a commercial motor vehicle;

B. the driver has more than one driver's license as of the effective date of the provisions of the New Mexico Commercial Driver's License Act;

C. the driver, the commercial motor vehicle the driver is driving or the motor carrier operation of the employer is subject to an out-of-service order; or

D. the driver has been convicted of a railroad-highway grade crossing violation.

**History:** Laws 1989, ch. 14, § 7; 1998, ch. 17, § 2; 2003, ch. 51, § 3; 2005, ch. 312, § 3.

**ANNOTATIONS**

**The 2005 amendment,** effective July 1, 2005, provided that it is unlawful for an employer to commit the specified acts.

**The 2003 amendment,** effective March 19, 2003, in the introductory paragraph substituted "An employer shall not" for "No employer shall", substituted "a period in which" for "any period" at the end; deleted "in which" at the beginning of Subsections A and B; substituted "the driver, the commercial motor vehicle the driver" for "in which the employee, the commercial motor vehicle the employee" at the beginning of Subsection C; and added Subsection D.

**The 1998 amendment,** effective May 20, 1998, inserted "require," following "allow," in the undesignated paragraph; added Subsection C; and made minor stylistic changes.

## 66-5-59. Commercial driver's license required.

A. A person may not drive a commercial motor vehicle unless the person holds and is in immediate possession of a commercial driver's license and applicable endorsements valid for the vehicle the person is driving, except when driving under a

commercial driver's instruction permit and accompanied by the holder of a commercial driver's license valid for the vehicle being driven.

B. A person may not drive a commercial motor vehicle while the person's driving privilege is suspended, revoked or canceled or while subject to a disqualification or in violation of an out-of-service order.

C. A person who is a resident of this state for at least thirty days may not drive a commercial motor vehicle under the authority of a commercial driver's license issued by another jurisdiction.

D. A person may not drive a commercial motor vehicle in violation of an out-of-service order.

**History:** Laws 1989, ch. 14, § 8; 2003, ch. 51, § 4.

**ANNOTATIONS**

**The 2003 amendment,** effective March 19, 2003, substituted "A person may not drive" for "No person may drive" at the beginning of Subsections A and B; in Subsection C substituted "A person" for "No person" at the beginning, inserted "not" preceding "drive a commercial"; and added Subsection D.

## 66-5-60. Commercial driver's license; qualifications; standards.

A. The division shall not issue a commercial driver's license to a person unless that person can establish that New Mexico is the person's state of domicile and has passed a knowledge test and a skills test for driving a commercial motor vehicle and, for related endorsements, has passed a medical fitness test and has satisfied any other requirements of the New Mexico Commercial Driver's License Act [66-5-52 to 66-5-72 NMSA 1978].

B. The division may authorize a person, including an agency of this or another state, an employer, a private driver-training facility or other private institution or a department, agency or instrumentality of local government to administer the skills test or knowledge test specified by this section; provided that the person being authorized has completed entry-level driver training as required by federal law.

C. A commercial driver's license applicant who does not pass the skills test or knowledge test may repeat the:

(1) knowledge test no more than twice a week; and

(2) skills test no more than three times a year.

D. If the department determines that a commercial driver's license applicant has committed an offense in taking a test specified in this section, the division shall not issue a commercial driver's license to that applicant within one year of the department's determination.

**History:** Laws 1989, ch. 14, § 9; 2005, ch. 312, § 4; 2007, ch. 321, § 5; 2008, ch. 72, § 1; 2014, ch. 67, § 1; 2022, ch. 24, § 3.

**ANNOTATIONS**

**The 2022 amendment,** effective January 1, 2023, revised the qualifications for a person who is authorized to administer a skills test or knowledge test for driving a commercial motor vehicle; and in Subsection B, added "provided that the person being authorized has completed entry-level driver training as required by federal law".

**The 2014 amendment,** effective May 21, 2014, provided for the administration of the knowledge test; provided for repeating the knowledge and skills tests; in Subsection A, after "passed a knowledge", added "test"; in Subsection B, after "skills test", added "or knowledge test"; in Subsection C, in the introductory paragraph, after "applicant", deleted "shall not take a test specified in this section more than three times within one year" and added "who does not pass the skills test or knowledge test may repeat the"; and in Subsection C, added Paragraphs (1) and (2).

**The 2008 amendment,** effective May 14, 2008, eliminated the authority to waive any requirement of the commercial driver’s license test.

**The 2007 amendment,** effective April 2, 2007, required an applicant for a commercial driver’s license to establish that New Mexico is the person’s state of domicile.

**The 2005 amendment,** effective July 1, 2005, in Subsection A, provided that a license shall not be issued unless the person has passed a medical fitness test; added Subsection D to provide that an applicant shall not take a test more than three times in one year; and added Subsection E to provide that if the department determines that an applicant has committed an offense in taking a test, the division shall not issue a license to the applicant within one year of the department's determination.

## 66-5-61. Commercial driver's license; limitations on issuance.

A commercial driver's license may not be issued to a person while the person is subject to a disqualification from driving a commercial motor vehicle or while the person's driver's license is suspended, revoked or canceled in any state, nor may a commercial driver's license be issued to a person who has a commercial driver's license issued by any other state unless the person first surrenders all such licenses to the division. The division shall return such licenses to the issuing state for cancellation.

**History:** Laws 1989, ch. 14, § 10.

## 66-5-62. Commercial driver's license; instruction permit; application; duplicate.

A. A commercial driver's instruction permit may be issued to an individual who holds a valid driver's license.

B. The commercial driver's instruction permit may be issued for a period not to exceed one year; provided that a knowledge exam is passed prior to each issuance. The holder of a commercial driver's instruction permit may drive a commercial motor vehicle on a highway only when accompanied by the holder of a commercial driver's license valid for the type of vehicle driven, who occupies a seat beside the individual for the purpose of giving instruction in driving the commercial motor vehicle.

**History:** Laws 1989, ch. 14, § 11; 2022, ch. 24, § 4.

**ANNOTATIONS**

**The 2022 amendment,** effective January 1, 2023, extended the period of time for which a commercial driver's instruction permit may be issued, from six months to one year, provided that a knowledge exam is passed prior to each issuance; and in Subsection B, after "not to exceed", deleted "six months. Only one renewal or reissuance may be granted within a two-year period" and added "one year; provided that a knowledge exam is passed prior to each issuance".

## 66-5-62.1. Restricted commercial driver's license for certain farm-related service industries.

A. The division shall waive the required knowledge and skills tests pursuant to Section 66-5-60 NMSA 1978 and issue a restricted commercial driver's license to an employee of the following farm-related service industries:

(1) agriculture-chemical businesses;

(2) custom harvesters;

(3) farm retail outlets and suppliers; and

(4) livestock feeders.

B. A restricted commercial driver's license issued pursuant to this section shall meet all the requirements of the New Mexico Commercial Driver's License Act, except for a knowledge and skills test. A restricted commercial driver's license issued pursuant to this section shall be accorded the same reciprocity as a commercial driver's license meeting all of the requirements of the New Mexico Commercial Driver's License Act. The restrictions imposed upon the issuance of the restricted commercial driver's license

shall not limit a person's use of the restricted commercial driver's license in a noncommercial motor vehicle, nor shall the restricted commercial driver's license affect the division's authority to administer its driver licensing program for operators of vehicles other than commercial motor vehicles.

C. The division shall restrict a commercial driver's license issued pursuant to this section as follows:

(1) an applicant shall have a good driving record, as defined in this paragraph. Drivers who have not held a motor vehicle driver's license for at least one year shall not be eligible for the restricted commercial driver's license. Drivers who have been licensed between one and two years shall have a good driving record for their entire driving history. Drivers who have been licensed for more than two years shall have a good driving record for the two most recent years. For the purposes of this paragraph, "good driving record" means that an applicant:

(a) has not had more than one type of driver's license;

(b) has not had a license suspended, revoked or canceled;

(c) has not had a conviction, for any type of motor vehicle, for the disqualifying offenses contained in Section 66-5-68 NMSA 1978;

(d) has not had a conviction, for any type of motor vehicle, for a serious traffic violation; and

(e) has not had a conviction for a violation of state or local law relating to motor vehicle traffic control, other than a parking violation, arising in connection with any traffic accident and has no record of an accident in which the applicant was at fault;

(2) a restricted commercial driver's license shall have the same renewal cycle as an unrestricted commercial driver's license and shall be limited to a seasonal period or periods as determined by the division; provided that the total number of calendar days in any twelve-month period for which the restricted commercial driver's license is valid does not exceed one hundred eighty days. If the division elects to provide for more than one seasonal period, the restricted commercial driver's license is valid for commercial motor vehicle operation only during the currently approved season and must be revalidated for each successive season. Only one seasonal period of validity may appear on the license document at a time. The good driving record must be confirmed prior to any renewal or revalidation;

(3) the holder of a restricted commercial driver's license is limited to operating class B and class C vehicles, as described in Section 66-5-65 NMSA 1978;

(4) a restricted commercial driver's license shall not be issued with any endorsements on the license document. Only the limited tank vehicle and hazardous

materials endorsement privileges that the restricted commercial driver's license automatically confers and that are described in Paragraph (5) of this subsection are permitted;

(5) a restricted commercial driver's license holder shall not drive a vehicle carrying any quantity of hazardous materials that require a placard on the vehicle, except for:

(a) diesel fuel in quantities of one thousand gallons or less;

(b) liquid fertilizers, such as plant nutrients, in vehicles or implements of husbandry in total quantities of three thousand gallons or less; and

(c) solid fertilizers, such as solid plant nutrients, that are not transported with any organic substance;

(6) a restricted commercial driver's license holder shall not hold an unrestricted commercial driver's license at the same time; and

(7) a restricted commercial driver's license holder shall not operate a commercial motor vehicle beyond one hundred fifty miles from the place of business or the farm currently being served.

D. The department, by rule, may provide for the means of designating the commercial driver's license allowed by this section as a restricted commercial driver's license.

**History:** Laws 2013, ch. 210, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2013, ch. 210 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2013, 90 days after the adjournment of the legislature.

## 66-5-63. Commercial driver's license; permit; application; duplicate.

A. The application for a commercial driver's license or commercial driver's instruction permit shall include the following:

(1) the full name and current mailing and residential address of the person;

(2) a physical description of the person, including sex, height, weight and eye color;

(3) the person's date of birth;

(4) the person's social security number;

(5) the person's signature;

(6) a consent to release the person's driving record information;

(7) certification by the applicant that the commercial motor vehicle used for the knowledge and skills test for driving a motor vehicle is in the class of commercial motor vehicles for which the person has applied for a commercial motor vehicle license;

(8) certification by the applicant that the commercial motor vehicle used for the knowledge and skills test for driving a motor vehicle is representative of the endorsement for which the person has applied; and

(9) any other information required by the department.

B. When a licensee changes his name or residence or mailing address, an application for a duplicate license shall be made as provided in Section 66-5-20 NMSA 1978.

**History:** Laws 1989, ch. 14, § 12; 1992, ch. 13, § 4; 2005, ch. 312, § 5.

**ANNOTATIONS**

**The 2005 amendment,** effective July 1, 2005, added Subsection A(7) to provide that the applicant must certify that the vehicle used for the knowledge and skills test is in the class of vehicles for which the applicant has applied for a license; and added Subsection A(8) to provide that the applicant must certify that the vehicle used for the knowledge and skills test is representative of the endorsement for which the applicant has applied.

**The 1992 amendment,** effective April 1, 1992, deleted "and hair" following "eye" in Subsection A(2); made minor stylistic changes in Subsections A(3), A(4), and A(6); deleted former Subsection A(6), which read: "the person's color picture"; redesignated former Subsections A(7) and A(8) as present Subsections A(6) and A(7); and substituted "department" for "division" in Subsection A(7).

## 66-5-64. Commercial driver's license and commercial learner's permit; content.

The commercial driver's license shall be marked "commercial driver's license" or "CDL". The commercial learner's permit shall be marked "commercial learner's permit" or "CLP", and shall state: "This permit is invalid unless accompanied by a New Mexico driver's license.". A commercial driver's license or commercial learner's permit shall include, but not be limited to, the following information:

A. the person's name and current New Mexico physical address;

B. the person's full face or front-view color photograph;

C. a physical description of the person, including sex, height, weight and eye color;

D. the person's date of birth;

E. the person's signature;

F. the class or type of commercial motor vehicle that the person is authorized to drive, together with any endorsements or restrictions;

G. the name of this state; and

H. the dates between which the license or permit is valid.

**History:** Laws 1989, ch. 14, § 13; 1991, ch. 150, § 1; 1992, ch. 13, § 5; 2004, ch. 59, § 17; 2023, ch. 70, § 3.

**ANNOTATIONS**

**The 2023 amendment,** effective January 1, 2024, required certain content to be included on commercial driver's licenses and commercial learner's permits; in the section heading, added "and commercial learner's permit"; and in the introductory clause, added "The commercial learner's permit shall be marked 'commercial learner's permit' or 'CLP', and shall state: 'This permit is invalid unless accompanied by a New Mexico driver's license.'. A commercial driver's license or commercial learner's permit".

**The 2004 amendment,** effective March 4, 2004, amended Subsection A to change "name and residential address of the person" to "the person's name and current New Mexico physical or mailing address" and amended Subsection B to change "color picture" to "full face or front-view color photograph".

**The 1992 amendment,** effective April 1, 1992, deleted "and hair" following "eye" in Subsection C and made minor stylistic changes in Subsection F.

**The 1991 amendment,** effective June 14, 1991, added "the person's" at the beginning of Subsection D; deleted former Subsection E, which read "the person's social security number and any number or identifier deemed appropriate by the division"; and redesignated former Subsections F to I as present Subsections E to H.

## 66-5-64.1. Non-domiciled commercial driver's license or non-domiciled commercial driver's instruction permit by a foreign national with lawful status.

A. An application for a non-domiciled commercial driver's license or a non-domiciled commercial driver's instruction permit by a foreign national with lawful status for a REAL ID-compliant non-domiciled commercial driver's license or non-domiciled commercial driver's instruction permit shall contain the unique identifying number and expiration date, if applicable, of the foreign national's valid passport, valid visa, employment authorization card issued under the applicant's approved deferred action status or other arrival-departure record or document issued by the federal government that conveys lawful status. The division may issue to an eligible foreign national applicant a REAL ID-compliant non-domiciled commercial driver's license or non-domiciled commercial driver's instruction permit that is valid for a period not to exceed the duration of the applicant's lawful status; provided that if that date cannot be determined by the division and the applicant is not a legal permanent resident, the license or permit shall expire one year after the effective date of the license.

B. A non-domiciled commercial driver's license issued to a foreign national with lawful status shall contain the prominent statement:

(1) "Non-domiciled commercial driver's license"; or

(2) "Non-domiciled CDL".

C. A non-domiciled commercial driver's instruction permit issued to a foreign national with lawful status shall contain the prominent statement:

(1) "Non-domiciled commercial learner's permit"; or

(2) "Non-domiciled CLP".

D. The word "Non-domiciled" shall be conspicuously and unmistakably displayed but may be noncontiguous with the words or phrases "commercial driver's license", "CDL", "commercial learner's permit" or "CLP".

**History:** Laws 2022, ch. 24, § 2.

**ANNOTATIONS**

**Effective dates.** — Laws 2022, ch. 24, § 8 made Laws 2022, ch. 24, § 2 effective January 1, 2023.

## 66-5-65. Classifications; endorsements; restrictions.

A. Commercial driver's licenses may be issued with the classifications, endorsements and restrictions enumerated in Subsections B, C and D of this section, provided that the applicant has passed the knowledge and skills test required by the department. The holder of a valid commercial driver's license may drive all vehicles in the class for which that license is issued and all lesser classes of vehicles except

motorcycles and vehicles that require an endorsement, unless the proper endorsement appears on the license.

B. The following classifications shall apply to commercial driver's licenses:

(1) class A - any combination of vehicles with a gross combination weight rating of more than twenty-six thousand pounds, if the gross vehicle weight rating of the vehicle or vehicles being towed is in excess of ten thousand pounds;

(2) class B - any single vehicle with a gross vehicle weight rating of more than twenty-six thousand pounds and any such vehicle towing a vehicle with a gross vehicle weight rating of ten thousand pounds or less; and

(3) class C - any single vehicle or combination of vehicles that does not meet either the definition of Paragraph (1) or (2) of this subsection but is:

(a) designed to transport sixteen or more passengers, including the driver; or

(b) used in the transportation of hazardous materials, which requires the vehicle to be placarded under applicable law.

C. The secretary, by regulation, may provide for classifications in addition to those set forth in Subsection B of this section.

D. The following endorsements and restrictions shall apply to commercial driver's licenses:

(1) "H" - authorizes driving a vehicle transporting hazardous material;

(2) "L" - restricts the driver to vehicles not equipped with airbrakes;

(3) "T" - authorizes driving a vehicle towing more than one trailer;

(4) "P" - authorizes driving vehicles, other than school buses, carrying passengers;

(5) "N" - authorizes driving tank vehicles;

(6) "X" - represents a combination of the hazardous material ("H") and tank vehicle ("N") endorsements;

(7) "S" - authorizes driving a school bus; and

(8) "K" - restricts the driver to driving a commercial motor vehicle in intrastate commerce only.

E. The department shall require an applicant requesting a hazardous material ("H") endorsement to be subject to a background check pursuant to the federal Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001. Information received pursuant to a background check required by the federal transportation security administration of the department of homeland security shall be kept confidential and shall be released only to the subject of the background check and the division. Fees charged for the background check shall be borne by the subject of the background check or by the employer.

**History:** Laws 1989, ch. 14, § 14; 1992, ch. 13, § 6; 1995, ch. 135, § 19; 1998, ch. 17, § 3; 2004, ch. 78, § 1; 2005, ch. 310, § 1; 2007, ch. 321, § 6.

**ANNOTATIONS**

**The 2007 amendment,** effective April 2, 2007, amended Subsection A to require applicants to pass a knowledge and skills test.

**The 2005 amendment,** effective June 17, 2005, in Subsection E, provided that background information required by the federal department of homeland security shall be kept confidential and released only the subject of the background check and that fees for the background check shall be paid by the subject or the employer.

**The 2004 amendment,** effective July 1, 2004, added Subsection E.

**The 1998 amendment,** effective May 20, 1998, in Paragraph B(1), substituted "combination weight rating" for "vehicle weight or a declared gross vehicle weight" near the beginning of the sentence and inserted "rating" preceding "of the vehicle" and "or vehicles" preceding "being towed" near the end of the sentence; in Paragraph B(2), substituted "rating" for "or a declared gross vehicle weight" near the beginning of the sentence and inserted "rating" preceding "of ten"; rewrote Paragraph B(3); substituted "material" for "materials" in Paragraph D(6); added Paragraph D(8); and made minor stylistic changes.

**The 1995 amendment,** effective June 16, 1995, inserted "gross vehicle weight or a" and made minor stylistic changes in Paragraphs (1) through (3) of Subsection B.

**The 1992 amendment,** effective April 1, 1992, substituted "Subsections B, C and D" for "Subsections B and C" in the first sentence of Subsection A; deleted "and classifications that may be set by regulation" following "classifications" in the introductory paragraph of Subsection B; added present Subsection C; redesignated former Subsection C as present Subsection D; substituted "towing more than one trailer" for "combination which includes a tractor, semitrailer and trailer" in Subsection D(3); and made minor stylistic changes throughout the section.

## 66-5-65.1. Repealed

**History:** Laws 2004, ch. 59, § 15; repealed by Laws 2022, ch. 24, § 7.

**ANNOTATIONS**

**Repeals.** — Laws 2022, ch. 24, § 7 repealed 66-5-65.1 NMSA 1978, as enacted by Laws 2004, ch. 59, § 15, relating to license endorsement fees, effective January 1, 2023. For provisions of former section, *see* the 2022 NMSA 1978 on *NMOneSource.com*.

## 66-5-66. Applicant record information; information exchange.

A. Before issuing a commercial driver's license, the department shall obtain pertinent driving record information from each state where the applicant has been licensed, through a multistate database, or from each state.

B. The department has the authority to exchange commercial driver's license information as it deems necessary to carry out the provisions of the New Mexico Commercial Driver's License Act [66-5-52 to 66-5-72 NMSA 1978], except that the results of a background check conducted pursuant to federal department of homeland security requirements shall be:

(1) confidential and not disseminated except to the subject of the background check and the division;

(2) used only for the purpose authorized by this section; and

(3) subject to protest, appeal or consideration of mitigating circumstances if used as a basis to disqualify a driver who held a commercial driver's license under rules promulgated by the transportation security administration of the department of homeland security.

C. The department shall provide to the commercial driver's license information system information on a conviction, disqualification, change in applicant status, change in the state of record or any other information concerning a holder of a commercial driver's license within ten days of receipt of that information. The secretary may adopt regulations to administer the requirement set forth pursuant to this subsection.

D. In determining whether a violation of law has occurred for the purpose of issuance, administration or revocation of a commercial driver's license, the department shall use information received from the commercial driver's license information system in the same manner as information received from the state or any of its agencies, instrumentalities or political subdivisions.

**History:** Laws 1989, ch. 14, § 15; 2005, ch. 310, § 2; 2005, ch. 312, § 6.

**ANNOTATIONS**

**2005 Multiple Amendments.** — Laws 2005, ch. 310, § 2 and Laws 2005, ch. 312, § 6 enacted different amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 2005, ch. 312, § 6, as the last act signed by the governor, is set out above and incorporates both amendments. The amendments enacted by Laws 2005, ch. 310, § 2 and Laws 2005, ch. 312, § 6 are described below. To view the session laws in their entirety, *see* the 2005 session laws on *NMOneSource.com*.

Laws 2005, ch. 312, § 6, effective July 1, 2005, added Subsection C to provide that the department shall provide to the commercial driver's license information system certain information concerning the holder of the license within ten days of receipt of the information; and added Subsection D to provide that in determining whether a violation of law has occurred, the department shall use information received from the commercial driver's license information system in the same manner as information form the state or its agencies, instrumentalities or political subdivisions.

Laws 2005, ch. 310, § 2, effective June 17, 2005, provided in Subsections B(1) through (3) that the results of a background check conducted pursuant to the federal department of homeland security requirements shall be confidential, used only for purposes authorized by this section and subject to protest, appeal or consideration of mitigating circumstances if used as a basis to disqualify a driver who held a license under rules of the transportation security administration.

## 66-5-66.1. Commercial driver's license, commercial learner's permit and commercial driver's permit eligibility; division to receive records from the federal commercial driver's license drug and alcohol clearinghouse; commercial driver's license downgrade procedures.

A. As used in this section:

(1) "commercial driver's license downgrade" means the division's removal of the commercial driver's license or commercial driver's permit privilege from a driver's license;

(2) "commercial driver's license drug and alcohol clearinghouse" means the federal motor carrier safety administration database that requires employers and service agents to report information to and to query regarding drivers who are subject to United States department of transportation controlled substance and alcohol testing regulations;

(3) "qualified" means the passage of the drug or alcohol test; and

(4) "not qualified" means a failure or refusal of the drug or alcohol test.

B. The division shall request all commercial driver's drug test results from the commercial driver's license drug and alcohol clearinghouse that determine whether the commercial driver is qualified or not qualified as required by the federal motor carrier safety administration. Pursuant to this section, if a commercial driver's drug or alcohol test results indicate that the commercial driver is prohibited from operating a commercial motor vehicle, the division shall refuse a request for:

(1) issuance or renewal of a commercial learner's permit or a commercial driver's license;

(2) an upgrade of a commercial learner's permit to a commercial driver's license; and

(3) transfer of an out-of-state commercial driver's license to this state.

C. The division shall request commercial driver's license drug and alcohol clearinghouse records of an applicant for a commercial driver's license at the time of application. Pursuant to this subsection, if the records indicate that the commercial driver's license applicant is prohibited from operating a commercial motor vehicle, the division shall refuse to:

(1) renew the commercial driver's license or H endorsement;

(2) advance a commercial driver's permit;

(3) issue an upgrade of the commercial driver's license to include an H endorsement; and

(4) issue, renew, transfer or upgrade a non-domiciled commercial driver's permit or commercial driver's license.

D. The division shall downgrade a commercial driver's license or commercial driver's permit to a class D noncommercial license upon receiving a commercial driver's license drug and alcohol clearinghouse record that indicates that a commercial driver's license or commercial driver's permit holder is prohibited from operating a commercial motor vehicle. The division shall complete the downgrade and enter it on the commercial driver's license information system driver record within sixty days of the division's receipt of the drug and alcohol clearinghouse record.

E. The division shall amend a driver's eligibility to operate a commercial motor vehicle if the division finds that a condition resulting in a restriction on a commercial driver's license or a commercial learner's permit no longer exists or was erroneous. Pursuant to this subsection, the division shall:

(1) terminate the commercial driver's license downgrade process without removing the commercial driver's license or commercial learner's permit privilege from

the driver's license if the division finds that the commercial driver's license or commercial learner's permit holder is no longer prohibited from operating a commercial motor vehicle;

(2) allow reinstatement of a commercial driver's license or commercial learner's permit privilege to the driver's license of a downgraded driver record upon notification from the federal motor carrier safety administration that the driver is no longer prohibited from operating a commercial motor vehicle; or

(3) reinstate a commercial driver's license or commercial learner's permit privilege to the driver's license, expunge a commercial driver's license downgrade from the commercial driver's license information system driver record and, if applicable, expunge from the motor vehicle record any reference to prohibited status upon notice from the federal motor carrier safety administration that the driver was erroneously identified as prohibited from operating a commercial motor vehicle.

**History:** Laws 2023, ch. 70, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2023, ch. 70, § 4 made Laws 2023, ch. 70, § 1 effective January 1, 2024.

## 66-5-67. Expiration and renewal; staggered licensing during implementation period.

A. Except as provided in Subsections C and E of this section, a commercial driver's license issued pursuant to the provisions of the New Mexico Commercial Driver's License Act [66-5-52 to 66-5-72 NMSA 1978] shall expire thirty days after the applicant's birthday in the fourth year after the effective date of the license.

B. The license is renewable within ninety days prior to its expiration or at an earlier date as approved by the secretary.

C. At the option of an applicant, a commercial driver's license may be issued for a period of eight years, provided that the applicant:

(1) pays the amount required for a commercial driver's license issued for a term of eight years;

(2) otherwise qualifies for a four-year commercial driver's license; and

(3) will not reach the age of seventy-nine during the last four years of the eight-year license period.

D. A driver's license issued pursuant to the provisions of Subsection C of this section shall expire thirty days after the applicant's birthday in the eighth year after the effective date of the license.

E. A commercial driver's license with a hazardous material endorsement shall expire:

(1) for an applicant transferring a commercial driver's license with the hazardous material endorsement, four years from the date of the last background check and testing for the hazardous material endorsement; or

(2) for an applicant adding endorsements or other changes to the commercial driver's license, no later than the expiration date of the hazardous material endorsement.

**History:** Laws 1989, ch. 14, § 16; 1992, ch. 13, § 7; 1999, ch. 222, § 3; 2007, ch. 321, § 7; 2022, ch. 24, § 5.

**ANNOTATIONS**

**The 2022 amendment,** effective January 1, 2023, raised the age limit for applicants who opt for an eight year commercial driver's license, and revised the conditions under which a commercial driver's license with a hazardous material endorsement shall expire, to be no later than the expiration date of the endorsement rather than the issuance of the commercial driver's license; in Subsection C, Paragraph C(3), after "will not reach the age of", deleted "seventy-five" and added "seventy-nine"; and in Subsection E, Paragraph E(2), after "the expiration date of the", deleted "commercial driver's license originally issued with the".

**The 2007 amendment,** effective April 2, 2007, added Subsection E to provide expiration dates for commercial driver's licenses with a hazardous material endorsement.

**The 1999 amendment,** effective July 1, 1999, deleted former Subsection C, and added Subsections C and D.

**The 1992 amendment,** effective April 1, 1992, added "staggered licensing during implementation period" to the section catchline, added "Except as provided in Subsection C of this section," in Subsection A, substituted "secretary" for "director" in Subsection B, and added Subsection C.

## 66-5-68. Disqualification.

A. The department shall disqualify a person from driving a commercial motor vehicle for at least thirty days if the federal motor carrier safety administration reports to the division that the person poses an imminent hazard.

B. The department shall disqualify a person who holds a commercial driver's license or who is required to hold a commercial driver's license or commercial driver's instruction permit from driving a commercial motor vehicle for a period of not less than one year, which shall run concurrently with any revocation or suspension action for the same offense, if the person:

(1) refuses to submit to a chemical test when requested pursuant to the provisions of the Implied Consent Act [66-8-105 to 66-8-112 NMSA 1978];

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

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

(4) is less than twenty-one years of age and submits to chemical testing pursuant to the Implied Consent Act and the test results indicate an alcohol concentration of two one hundredths or more; or

(5) is convicted of a violation of:

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

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

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

(d) driving a commercial motor vehicle after the driver's commercial driver's license, non-domiciled commercial driver's license, commercial driver's instruction permit or non-domiciled commercial driver's instruction permit is revoked, suspended, disqualified or canceled for violations while operating a commercial motor vehicle; or

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

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

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

E. The department shall disqualify a person from driving a commercial motor vehicle for life if the person is convicted of using a motor vehicle in the commission of any felony involving the manufacture, distribution or dispensing of a controlled substance or involving an act or practice of severe forms of trafficking in persons, as defined in federal law.

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

G. The department shall disqualify a person from driving a commercial motor vehicle for a period of:

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

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

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

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

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

(2) the second conviction results in revocation, cancellation or suspension of the person's commercial driver's license, non-domiciled commercial driver's license,

commercial driver's instruction permit or non-domiciled commercial driver's instruction permit or noncommercial motor vehicle driving privileges for sixty days.

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

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

(2) the third or a subsequent conviction results in the revocation, cancellation or suspension of the person's commercial driver's license, non-domiciled commercial driver's license, commercial driver's instruction permit or non-domiciled commercial driver's instruction permit or noncommercial motor vehicle driving privileges.

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

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

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

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

(3) one year if, during any three-year period, the person is convicted of a third or subsequent railroad-highway grade crossing violation in a separate incident.

L. After disqualifying, suspending, revoking or canceling a commercial driver's license, the department shall, within ten days, update its records to reflect that action. After disqualifying, suspending, revoking or canceling a non-domiciled commercial driver's privileges, the department shall, within ten days, notify the licensing authority of the state that issued the commercial driver's license.

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

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

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

P. New Mexico shall conform to the federal transportation security administration of the department of homeland security rules and shall "look back" or review a maximum of seven years for a background check.

**History:** Laws 1989, ch. 14, § 17; 1990, ch. 120, § 30; 1992, ch. 13, § 8; 2000, ch. 71, § 2; 2003, ch. 51, § 5; 2003, ch. 90, § 2; 2004, ch. 59, § 18; 2005, ch. 310, § 3; 2005, ch. 312, § 7; 2007, ch. 321, § 8; 2008, ch. 72, § 2; 2009, ch. 200, § 5; 2016, ch. 63, § 3; 2022, ch. 24, § 6.

## ANNOTATIONS

**Compiler's notes.** — The federal Hazardous Materials Transportation Act, referred to in Subsection G, was Act Jan. 3, 1975, P.L. 93-633, 88 Stat. 2156, which was initially classified as 49 USCS §§ 1801 et seq. and subsequently reclassified as 49 USCS Appx §§ 1801 et seq., and repealed by Act July 5, 1994, P.L. 103-272, § 7(b), 108 Stat. 1379. Similar provisions appear as 49 USCS §§ 5101 et seq.

**The 2022 amendment,** effective January 1, 2023, amended various disqualification provisions to include drivers who hold a commercial driver's instruction permit, a non-domiciled commercial driver's license, or a non-domiciled commercial driver's instruction permit, and added a new disqualification provision that disqualifies a person from driving a commercial motor vehicle for life for committing certain felonies related to trafficking in persons; in Subsection B, after "hold a commercial driver's license", added "or commercial driver's instruction permit", in Subparagraph B(5)(d), after "the driver's commercial driver's license", added "non-domiciled commercial driver's license, commercial driver's instruction permit or non-domiciled commercial driver's instruction permit"; in Subsection E, after "or of dispensing of a controlled substance", added "or involving an act or practice of severe forms of trafficking in persons, as defined in federal law"; in Subsection H, Paragraph H(2), after "the person's commercial driver's license", added "non-domiciled commercial driver's license, commercial driver's instruction permit or non-domiciled commercial driver's instruction permit"; in Subsection I, Paragraph I(2), after "the person's commercial driver's license", added "non-domiciled commercial driver's license, commercial driver's instruction permit or non-domiciled commercial driver's instruction permit"; and in Subsection L, after "revoking or canceling a", deleted "nonresident" and added "non-domiciled".

**The 2016 amendment,** effective May 18, 2016, removed the offense of using a motor vehicle in the commission of a felony involving possession of a controlled substance with intent to distribute from the list of offenses for which a commercial drivers license

shall be revoked for life, and required a conviction for such revocation; in Subsection D, after "secretary may issue", deleted "regulations" and added "rules"; and in Subsection E, after "if the person", deleted "uses a commercial" and added "is convicted of using", and after "dispensing of a controlled substance", deleted "or the possession with intent to manufacture, distribute or dispense a controlled substance".

**The 2009 amendment,** effective July 1, 2009, made no changes.

**The 2008 amendment,** effective May 14, 2008, in Subsection B, provided for the disqualification of a person who is required to hold a commercial driver’s license and added Paragraph (2) of Subsection G.

**The 2007 amendment,** effective April 2, 2007, changed "commercial motor vehicle" to "motor vehicle"; authorized the department to disqualify a person from driving a commercial vehicle for 120 days in addition to any other period of disqualification; and added Subsection M, which provided that convictions in other states be treated as convictions in this state.

**The 2005 amendment,** effective July 1, 2005, in Subsection B, provided that the department shall disqualify a person who holds a commercial driver's license from driving a commercial motor vehicle for the listed causes and that the one year period shall run concurrently with any revocation or suspension action for the same offense; added Subsection B(2) to provide that a person is disqualified if the person is twenty-one years of age or more and a chemical test indicates an alcohol concentration of eight one hundredths or more; and added Subsection B(3) to provide that a person is disqualified if the person is less than twenty-one years of age and a chemical test indicates an alcohol concentration of two one hundredths or more.

Laws 2005, ch. 310, § 3, effective June 17, 2005, also amended 66-5-68 NMSA 1978. The section was set out as amended by Laws 2005, ch. 312, § 7. *See* 12-1-8 NMSA 1978.

**The 2004 amendment,** effective March 4, 2004, added Subsection A, redesignated Subsections A to E as Subsections B to G, added new Subparagraphs (d) and (e) to Paragraph (2) of Subsection B, added new Subsections H and I, redesignated Subsection G as Subsection J, added Subsection K, redesignated Subsection H as Subsection L, deleted Subsection I and added Subsection M.

**The 2003 amendment,** effective March 28, 2003, in Subparagraph A(2)(a), deleted "Section 66-5-68.1 NMSA 1978" preceding "Section 66-8-102 NMSA 1978".

Laws 2003, ch. 51, § 5, effective March 19, 2003, also amended 66-5-68 NMSA 1978. The section was set out as amended by Laws 2003, ch. 90, § 2. *See* 12-1-8 NMSA 1978.

**The 2000 amendment,** effective May 17, 2000, substituted "intoxicating liquor or drugs in violation of Section" for "alcohol or a controlled substance, pursuant to Section" in Subsection A(2), inserted Subsection F, and redesignated the remaining subsections accordingly.

**The 1992 amendment,** effective April 1, 1992, substituted "Disqualification" for "Cancellation" in the catchline; rewrote the provisions of former Subsection A and redesignated them as present Subsections A and B; redesignated former Subsections B to G as present Subsections C to H; deleted "or who is convicted of any violation of the Controlled Substances Act" at the end of Subsection D; twice inserted "disqualifying" in Subsection G; added "or the implied consent act of another state" at the end of Subsection H; and made minor stylistic changes throughout the section.

**The 1990 amendment,** effective July 1, 1990, in Subsection B, substituted "secretary" for "taxation and revenue department" in the first sentence and "July 1, 1989" for "the effective date of the New Mexico Commercial Driver's License Act" at the end of the second sentence; added present Subsection E; redesignated former Subsections F and G as present Subsections E and F; and, in present Subsection F, deleted "taxation and revenue" preceding "department" in the first sentence.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Validity, construction and application of state or local law prohibiting maintenance of vehicle for purpose of keeping or selling controlled substances, 31 A.L.R.5th 760.

## 66-5-68.1. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 2003, ch. 90, § 9 repealed 66-5-68.1 NMSA 1978, as enacted by Laws 1992, ch. 13, § 9, relating to persons under influence of alcohol, effective March 28, 2003. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com.*

## 66-5-69. Notification of traffic convictions.

Within ten days after receiving a report of the conviction of a holder of a nonresident commercial driver's license for a violation of state law or local ordinance relating to motor vehicle traffic control other than a parking violation, committed in a commercial motor vehicle or a noncommercial motor vehicle, the division, after receipt of conviction information required pursuant to Section 66-5-28 NMSA 1978, shall forward the conviction information to the licensing authority that issued the commercial driver's license. A resident's conviction information shall be posted on the resident's motor vehicle record with the same speed used to post a nonresident's conviction information on the nonresident's motor vehicle record.

**History:** Laws 1989, ch. 14, § 18; 2004, ch. 59, § 19.

**ANNOTATIONS**

**The 2004 amendment,** effective March 4, 2004, added after "commercial motor vehicle" "or a noncommercial motor vehicle", deleted "notify the driver's licensing authority in the licensing state of the conviction in this state" and inserted in its place: "forward the conviction information to the licensing authority that issued the commercial driver's license. A resident's conviction information shall be posted on the resident's motor vehicle record with the same speed used to post a nonresident's conviction information on the nonresident's motor vehicle record".

## 66-5-69.1. Violation convictions; actions to mask, defer or divert; prohibited.

A. A person shall take no action to prevent a conviction of a traffic control law violation from appearing on the driving record of a commercial driver's license holder, regardless of the vehicle or state in which the violation occurred, including:

(1) masking or deferring imposition of a judgment of a traffic control law violation committed by a holder of a commercial driver's license; or

(2) allowing a holder of a commercial driver's license to enter a diversion program upon conviction of a traffic control law violation.

B. As used in this section, "traffic control law violation" does not include a parking violation.

**History:** Laws 2007, ch. 321, § 9.

**ANNOTATIONS**

**Emergency clause.** — Laws 2007, ch. 321, § 12 contained an emergency clause and was approved April 2, 2007.

## 66-5-70. Reciprocity.

Notwithstanding any other provision of law, a person who is not a New Mexico resident may drive a commercial motor vehicle if that person has a commercial driver's license issued by any state in accordance with the minimum standards established by the federal highway administration for the issuance of commercial driver's licenses, if the license is not suspended, revoked or canceled and if the person is not disqualified from driving a commercial motor vehicle or subject to an out-of-service order.

**History:** Laws 1989, ch. 14, § 19; 1998, ch. 17, § 4.

**ANNOTATIONS**

**Cross references.** — For definition of "out-of-service order", *see* 66-5-54 NMSA 1978.

**The 1998 amendment,** effective May 20, 1998, inserted "minimum" preceding "standards", inserted "established by the federal highway administration", and deleted "New Mexico" preceding "commercial driver's licenses,".

## 66-5-71. Penalties for violation of out-of-service orders.

A. A driver who is convicted of violating an out-of-service order shall be subject to a civil penalty of not less than two thousand five hundred dollars ($2,500) for a first violation and five thousand dollars ($5,000) for a second or subsequent violation, in addition to disqualification as provided in Subsection C of this section. The director shall collect the penalty upon conviction.

B. An employer who is convicted of a violation of Subsection C of Section 66-5-58 NMSA 1978 shall be subject to a civil penalty of not less than two thousand seven hundred fifty dollars ($2,750) or more than eleven thousand dollars ($11,000). The director shall collect the penalty upon conviction.

C. A driver who is convicted of violating an out-of-service order shall be disqualified for:

(1) not less than ninety days or more than one year if the driver is convicted of a first violation of an out-of-service order;

(2) not less than one year or more than five years if, during any ten-year period, the driver is convicted of two violations of out-of-service orders in separate incidents; and

(3) not less than three years or more than five years if, during any ten-year period, the driver is convicted of three or more violations of out-of-service orders in separate incidents.

**History:** Laws 1998, ch. 17, § 5; 2000, ch. 71, § 3; 2003, ch. 51, § 6; 2005, ch. 312, § 8; 2009, ch. 200, § 6.

**ANNOTATIONS**

**Cross references.** — For definition of "out-of-service order", *see* 66-5-54 NMSA 1978.

**The 2009 amendment,** effective July 1, 2009, in Subsection A, after "civil penalty of not less than", deleted "one thousand one hundred dollars ($1,100) or more than two thousand seven hundred fifty dollars ($2,700)" and added "two thousand five hundred dollars ($2,500) for a first violation and five thousand dollars ($5,000) for a second or subsequent violation".

**The 2005 amendment,** effective July 1, 2005, provided in Subsections A and B that the director shall collect the penalty upon conviction.

**The 2003 amendment,** effective March 19, 2003, rewrote Subsections A and B.

**The 2000 amendment,** effective May 17, 2000, substituted "not less than one thousand dollars ($1,000) or more than two thousand five hundred dollars ($2,500)" for "not less than ten dollars ($10.00) or more than twenty-five dollars ($25.00)" in Subsection A and substituted "not less than two thousand five hundred dollars ($2,500) or more than ten thousand dollars ($10,000)" for "not less than twenty-five dollars ($25.00) or more than one hundred dollars ($100)" in Subsection B.

## 66-5-72. Employer penalties for railroad-highway grade crossing violations.

An employer who is convicted of a violation of Subsection D of Section 66-5-58 NMSA 1978 shall be subject to a civil penalty of not more than ten thousand dollars ($10,000) for each violation. The director shall collect the penalty upon conviction.

**History:** Laws 2003, ch. 51, § 7; 2005, ch. 312, § 9.

**ANNOTATIONS**

**The 2005 amendment,** effective July 1, 2005, provided in Subsections A and B that the director shall collect the penalty upon conviction.

# PART 2
# ACTIONS AGAINST NONRESIDENT OWNERS AND OPERATORS

## 66-5-101, 66-5-102. Reserved.

**ANNOTATIONS**

**Compiler's notes.** — Laws 1978, ch. 35, § 274, recompiled former Sections 64-24-1 and 64-24-2, 1953 Comp., the Automobile Guest Statute, as Sections 64-5-101 and 64-5-102, 1953 Comp. However, in McGeehan v. Bunch, 88 N.M. 308, 540 P.2d 238 (1975), the Guest Statute was held unconstitutional. The sections referred to have therefore been omitted from NMSA 1978.

## 66-5-103. [Nonresident owners and operators; service of process on secretary of state in accident cases.]

That the acceptance by nonresidents of the rights and privileges conferred by existing laws to operate motor vehicles on the public highways of the state of New Mexico, or the operation by a nonresident, or his authorized chauffeur, or agent, of a motor vehicle on the said highways, other than under said laws, shall be deemed equivalent to an irrevocable appointment by such nonresident, binding upon his executor, administrator or personal representative, of the secretary of state of the state of New Mexico, or his successor in office, to be his true and lawful agent, upon whom may be served all lawful process in any action or proceeding against said nonresident, growing out of any accident or collision in which said motor vehicle may be involved, while same is operated in the state of New Mexico by said nonresident, or by his authorized chauffeur or agent; and said acceptance or operation of said vehicle shall be signification of his agreement that any such process against him, or his executor, administrator or personal representative, which is so served on the secretary of state shall be of the same legal force and validity as if served upon him personally, or his executor, administrator or personal representative, within the state.

**History:** Laws 1931, ch. 127, § 1; 1941 Comp., § 68-1003; Laws 1953, ch. 146, § 1; 1953 Comp., § 64-24-3; recompiled as 1953 Comp., § 64-5-103, by Laws 1978, ch. 35, § 275.

## ANNOTATIONS

**Cross references.** — For definition of "nonresident", *see* 66-1-4.12 NMSA 1978.

For personal service of process outside state in an action involving operation of a motor vehicle on a state highway, *see* 38-1-16 NMSA 1978.

**Statutory intent.** — It is the intent of this section and Section 66-5-104 NMSA 1978 to accomplish due process upon the defendant nonresident motorist by service of process upon the statutory agent of the defendant, and further, to give greater substance to the service of process by service personally upon the defendant of a notice that this formal part of the statutory service of process has been complied with, and also by the delivery to him personally of a copy of the process, a copy of the complaint, and a copy of the order of court directing the service. *State ex rel. Dresden v. District Court*, 1941-NMSC-013, 45 N.M. 119, 112 P.2d 506.

**"Nonresident".** — The word "nonresident" includes every nonresident whether a corporation or an individual. *Crawford v. Refiners Coop. Ass'n*, 1962-NMSC-131, 71 N.M. 1, 375 P.2d 212.

**"Process".** — The word "process" is used in the sense of "summons." *State ex rel. Dresden v. District Court*, 1941-NMSC-013, 45 N.M. 119, 112 P.2d 506.

**When nonresident provisions inapplicable.** — Service of process on New Mexico driver by serving a copy of the summons, complaint and court order upon the driver by an Arizona sheriff was valid under Section 38-1-16 NMSA 1978 concerning personal

service out of state, where the driver was completely apprised of the case against him, even though plaintiff apparently thought at the time that service must be obtained under the nonresident motorist provisions (this section and Section 66-5-104 NMSA 1978). *Crawford v. Refiners Coop. Ass'n*, 1962-NMSC-131, 71 N.M. 1, 375 P.2d 212.

**Service upon director of dissolved corporation in Arizona** is sufficient under New Mexico law; and it is not necessary that service be made in the state of incorporation. *Crawford v. Refiners Coop. Ass'n*, 1962-NMSC-131, 71 N.M. 1, 375 P.2d 212.

**Defendant must have been nonresident at time of accident.** — To be valid, service on nonresident defendant by serving secretary of state requires that defendant was a nonresident at time of the accident and not at time the suit is filed. *Fisher v. Terrell*, 1947-NMSC-064, 51 N.M. 427, 187 P.2d 387.

**Residence precludes service on secretary of state.** — A finding to the effect that defendants were New Mexico residents at time of the accident would preclude service of process on secretary of state. *Fisher v. Terrell*, 1947-NMSC-064, 51 N.M. 427, 187 P.2d 387.

**To confer jurisdiction under this section and Section 66-5-104 NMSA 1978** not only must a cause of action be stated in a complaint but a plaintiff "shall further show in his complaint or by affidavit" that a defendant was a nonresident owner or operator as contemplated by this section at the time of the accident or collision. The complaint cannot simply state that the defendants were nonresidents. *St. Paul Fire & Marine Ins. Co. v. Rutledge*, 1961-NMSC-024, 68 N.M. 140, 359 P.2d 767.

**Jurisdiction may be proved during trial if nonresident defendants.** — Where service of process on the out-of-state residents was sought pursuant to this section, the plaintiffs were entitled to the opportunity of proving jurisdiction during the trial on the merits and not be cut off at a preliminary hearing. *Schramm v. Oakes*, 352 F.2d 143 (10th Cir. 1965).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 8 Am. Jur. 2d Automobiles and Highway Traffic §§ 935 to 951.

Constitutionality and construction of statute authorizing constructive or substituted service of process on, and continuation of pending action against, foreign representative of deceased nonresident driver of motor vehicle, arising out of accident occurring in state, 18 A.L.R.2d 544.

What is "motor vehicle" or the like within statute providing for constructive or substituted service of process on nonresident motorist, 48 A.L.R.2d 1283.

Statute providing for constructive substituted service of process on nonresident motorist as applicable where accident occurs when motor vehicle or the person injured or property damaged was not on highway, 73 A.L.R.2d 1351.

61 C.J.S. Motor Vehicles § 502.

## 66-5-104. [Procedure in action against nonresident owner or operator.]

The manner of procuring and serving process in any cause, brought pursuant to the preceding section [66-5-103 NMSA 1978], shall be as follows, to wit:

The plaintiff shall file a verified complaint in one of the district courts of the state, showing a cause of action against the defendant, or his executor, administrator or personal representative, of the class contemplated in Section one (66-5-103 NMSA 1978) hereof; and shall further show in said complaint, or by affidavit, to the satisfaction of the judge of said court, that the defendant, or his executor, administrator or personal representative, is one of the persons contemplated in Section one (66-5-103 NMSA 1978), and the residence of said defendant, or his executor, administrator or personal representative, and a description of the car, or motor vehicle, claimed to have been operated by the said defendant, or his agent, as near as the same can reasonably be ascertained by the plaintiff; and the time, place and nature of such accident, or injury. Upon such showing being made, the judge shall make an order, directing that service of process be made on the defendant, or his executor, administrator or personal representative, as provided in Section one (66-5-103 NMSA 1978) hereof; and, also, that a copy of the process, and complaint, and of said order, and a notice that the same has been served upon the secretary of state, pursuant to this act [66-5-103, 66-5-104 NMSA 1978], be delivered to the defendant personally, or his executor, administrator or personal representative, without the state. Proof of such service shall be made by affidavit filed in said cause, and service shall be deemed complete thirty (30) days from the date such personal service is made on the defendant, or his executor, administrator or personal representative.

The court in which the action is pending shall, upon affidavit submitted upon behalf of the defendant, or his executor, administrator or personal representative, grant such additional time to answer, or continuances, as shall be reasonably necessary to allow defendant, or his executor, administrator or personal representative, full opportunity to plead and prepare for the trial of the said cause.

**History:** Laws 1931, ch. 127, § 2; 1941 Comp., § 68-1004; Laws 1953, ch. 146, § 2; 1953 Comp., § 64-24-4; recompiled as 1953 Comp., § 64-5-104, by Laws 1978, ch. 35, § 276.

### ANNOTATIONS

**Cross references.** — For process against foreign corporations, *see* 38-1-6 NMSA 1978.

**"Nonresident".** — Intent of the legislature in writing Section 66-5-103 NMSA 1978 and this section was to have the word "nonresident" include every nonresident whether a

corporation or an individual. *Crawford v. Refiners Coop. Ass'n*, 1962-NMSC-131, 71 N.M. 1, 375 P.2d 212.

**When nonresident provisions inapplicable.** — Service of process on New Mexico driver by serving a copy of the summons, complaint and court order upon the driver by an Arizona sheriff was valid under Section 38-1-16 NMSA 1978 concerning personal service out of state, where the driver was completely apprised of the case against him, even though plaintiff apparently thought at the time that service must be obtained under the nonresident motorist provisions (this section and Section 66-5-104 NMSA 1978). *Crawford v. Refiners Coop. Ass'n*, 1962-NMSC-131, 71 N.M. 1, 375 P.2d 212.

**Service upon director of dissolved corporation in Arizona** is sufficient under New Mexico law; and it is not necessary that service be made in the state of incorporation. *Crawford v. Refiners Coop. Ass'n*, 1962-NMSC-131, 71 N.M. 1, 375 P.2d 212.

**To confer jurisdiction under Section 66-5-103 NMSA 1978 and this section** not only must a cause of action be stated in a complaint but a plaintiff "shall further show in his complaint or by affidavit" that a defendant was a nonresident owner or operator as contemplated by Section 66-5-103 NMSA 1978 at the time of the accident or collision. The complaint cannot simply state that the defendants were nonresidents. *St. Paul Fire & Marine Ins. Co. v. Rutledge*, 1961-NMSC-024, 68 N.M. 140, 359 P.2d 767.

**Notice of service of process on secretary must be given.** — The clause "notice that the same have [has] been served upon the secretary of state" refers to what is therefore directed to be served upon the secretary of state, that is "process." *State ex rel. Dresden v. District Court*, 1941-NMSC-013, 45 N.M. 119, 112 P.2d 506.

**Notice of service of court's order need not be given.** — It is not necessary that a copy of the court's order be served on the secretary of state, and that notice be delivered to the defendant personally that such copy has been served upon the secretary of state. *State ex rel. Dresden v. District Court*, 1941-NMSC-013, 45 N.M. 119, 112 P.2d 506.

**Action between nonresidents to recover damages for wrongful death** is transitory in character and may be brought and tried in any county in the state, so that prohibition will not lie to restrain district court of a county other than that in which the accident took place from going forward with the case. *State ex rel. Appelby v. District Court*, 1942-NMSC-046, 46 N.M. 376, 129 P.2d 338.

**Secretary of state may not charge a fee** where service of process on nonresident operators of motor vehicles is made upon him. 1936 Op. Att'y Gen. 36-1365.

**Law reviews.** — For comment on service on nonresidents in other contexts, see Melfi v. Goodman, 69 N.M. 488, 368 P.2d 582 (1962); J.H. Silversmith, Inc. v. Keeter, 72 N.M. 246, 382 P.2d 720 (1963), see 3 Nat. Resources J. 348 (1963).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 8 Am. Jur. 2d Automobiles and Highway Traffic §§ 952 to 976.

61 C.J.S. Motor Vehicles § 502(5).

# PART 3
# FINANCIAL RESPONSIBILITY

## 66-5-201. Short title.

Sections 66-5-201 through 66-5-239 NMSA 1978 may be cited as the "Mandatory Financial Responsibility Act".

**History:** 1953 Comp., § 64-5-201, enacted by Laws 1978, ch. 35, § 277; 1983, ch. 318, § 1.

**ANNOTATIONS**

**Cross references.** — For provisions relating to operator's and chauffeur's licenses, *see* 66-5-1.1 NMSA 1978 et seq.

**Compiler's notes.** — Many of the following cases and opinions were decided under former law.

**I. GENERAL CONSIDERATION.**

**Scope of act's influence.** — The Financial Responsibility Act, Sections 64-24-42 to 64-24-104, 1953 Comp. (similar to Sections 66-5-201 to 66-5-239 NMSA 1978), does not undertake to exert any statutory influence or compulsion upon all motorists to have and maintain proof of financial responsibility in compliance with its provisions. Its statutory influence or compulsion is exerted only upon motorists who have been involved in accidents or who fail to pay judgments rendered against them for damages resulting from the use and operation of motor vehicles. And it exerts influence or compulsion upon such motorists by denying to them driving privileges, registration certificates or plates unless and until they have and maintain such proof of financial responsibility. *Farmers Ins. Exch. v. Ledesma*, 214 F.2d 495 (10th Cir. 1954).

**Liberal construction.** — The purpose of the Motor Vehicle Safety Responsibility Law, Sections 64-24-42 to 64-24-104, 1953 Comp. (similar to Sections 66-5-201 to 66-5-239 NMSA 1978), is to provide protection to the public from injury and damage resulting from the operation of motor vehicles upon the public highways. The intended beneficiaries are the members of the general public who may be injured in automobile accidents. The act represents the considered public policy of the state, and it should be given a liberal construction to accomplish the intended objective. *Farmers Ins. Exch. v. Ledesma*, 214 F.2d 495 (10th Cir. 1954).

**Duty to settle.** — Finding against a third-party individual in her action against defendants' insurer was proper where the New Mexico Mandatory Financial Responsibility Act did not impose a duty to settle on the part of the insurer; however, such a claim existed under the unfair claims practices provisions of the Insurance Code. *Hovet v. Lujan*, 2003-NMCA-061, 133 N.M. 611, 66 P.3d 980, *aff'd sub nom. Hovet v. Allstate Ins. Co.*, 2004-NMSC-010, 135 N.M. 397, 89 P.3d 69.

**Uninsured motorist statutes attempt to have insurance coverage always available.** — Uninsured motorist statutes direct that automobile liability policies include coverage for damages caused by uninsured motorists, unless rejected by the insured, and are intended to eliminate circumstances where the indemnification of an innocent person involved in an automobile accident depends on the chance whether the negligent party was insured or not. *American Mut. Ins. Co. v. Romero*, 428 F.2d 870 (10th Cir. 1970).

**Limitation of insurance clause given effect when clear and unambiguous.** — Where a trucking company's insurance policy covered each of its tractors and trailers, and where a tractor-trailer rig insured under the policy was involved in a single accident, the policy declaration, which stated that regardless of the number of covered "autos" or vehicles involved in the accident, the most that would be paid for any one accident was the limit of insurance for liability coverage shown in the declarations page set at $1,000,000, the policy was clear that the insurer intended its $1,000,000 each accident limitation to apply regardless of the number of covered vehicles that were involved in the accident. *Lucero v. Northland Ins. Co.*, 2015-NMSC-011, *rev'g* 2014-NMCA-055, 326 P.3d 42.

**Stacking precludes the aggregation of coverages applicable to vehicles not involved in the accident in question.** — Stacking does not apply to covered vehicles that are both involved in an accident. *Lucero v. Northland Inc. Co.*, 2014-NMCA-055, cert. granted, 2014-NMCERT-005.

**Aggregation of coverages did not involve stacking.** — Where a tractor and a trailer were negligently operated by the insured's employee and collided with a vehicle driven by plaintiff; the insured's insurance policy provided one million dollars in coverage for each covered vehicle; the tractor and trailer were separately covered vehicles; an anti-stacking clause of the policy provided that regardless of the number of covered vehicles, premiums paid or vehicles involved in an accident, the total of all damages combined resulting from one accident was one million dollars; and defendant claimed that the anti-stacking clause precluded the payment of one million dollars for each covered vehicle involved in the accident, defendant's limits of liability were two million dollars because the anti-stacking clause did not apply to covered vehicles that were both involved in an accident. *Lucero v. Northland Inc. Co.*, 2014-NMCA-055, cert. granted, 2014-NMCERT-005.

**Ambiguity in policy was resolved in favor of the insured.** — Where a tractor and a trailer were negligently operated by the insured's employee and collided with a vehicle

driven by plaintiff; the insured's insurance policy provided one million dollars in coverage for each covered vehicle; the tractor and trailer were separately covered vehicles; and the policy contained an anti-stacking clause which limited liability coverage to one million dollars for each accident, if the anti-stacking clause were read to preclude liability coverage on one of the covered vehicles involved in the accident, the anti-stacking clause would conflict with the liability coverage provisions of the policy, creating an ambiguity in the policy that would be construed in favor of plaintiffs to give effect to the reasonable expectations of the insured that the policy provided one million dollars in liability coverage for each covered vehicle involved in an accident, even if it was the same accident. *Lucero v. Northland Inc. Co.*, 2014-NMCA-055, cert. granted, 2014-NMCERT-005.

**Policy as proof of future financial responsibility.** — Policy covering insurance for future constituted proof of driver's future financial responsibility necessary to his continued operation of a vehicle. *Larson v. Occidental Fire & Cas. Co.*, 1968-NMSC-160, 79 N.M. 562, 446 P.2d 210, *overruled on other grounds by Estep v. State Farm Mut. Auto. Ins. Co.*, 1985-NMSC-069, 103 N.M. 105, 703 P.2d 882.

**Applicable to uninsured coverage.** — A driver exclusion agreement applies to uninsured motorist coverage as well as liability coverage. *Moore v. State Farm Mut. Auto. Ins. Co.*, 1994-NMCA-165, 119 N.M. 122, 888 P.2d 1004, cert. denied, 889 P.2d 203.

**No direct claim.** — The Mandatory Financial Responsibility Act does not state that a person who suffers damages has a direct claim against an insurance company. *Little v. Gill*, 2003-NMCA-103, 134 N.M. 321, 76 P.3d 639.

**Joinder of insurance company.** — Under former Section 66-5-221 NMSA 1978 (repealed), accident victim could properly join insurance company as a defendant; an insurance company is a proper party defendant if (1) the coverage was mandated by law, (2) it benefits the public, and (3) no language of the law expresses an intent to deny joinder. *Raskob v. Sanchez*, 1998-NMSC-045, 126 N.M. 394, 970 P.2d 580.

Absent clear language to the contrary from the legislature, the repeal of former 66-5-201 NMSA 1978 does not negate the test set out in *Raskob v. Sanchez*, 1998-NMSC-045, 126 N.M. 394, 970 P.2d 580, for joinder of an insurance company in an action arising out of an automobile accident. *Martinez v. Reid*, 2002-NMSC-015, 132 N.M. 237, 46 P.3d 1237.

**No intent in the law to deny joinder.** — Where an accident victim, who was injured in a traffic accident caused by the driver of a commercial vehicle, brought an action against the driver of the commercial vehicle, an out-of-state resident, and sought to join the commercial driver's insurer, and where the insurer argued that joinder should not be allowed because commercial carriers are exempt from the New Mexico Financial Responsibility Act, 66-5-201 to 66-5-239 NMSA 1978, it was held that where insurance coverage is mandated by law for the benefit of the public, as it was in this case, and

there is no language in the law expressing an intent to deny joinder, generally the insurance company is a proper party. Thus, joinder will be permitted if the coverage was mandated by law, it benefits the public, and no language of the law expresses an intent to deny joinder. *Walker v. Spina*, 347 F. Supp.3d 868 (D. N.M. 2018).

**Uninsured motorist coverage under a newly acquired car provision.** — Where the insured's insurance policy was ambiguous in regard to the limits of coverage on a newly acquired car and the insured purchased a new car which became the named vehicle under the policy; the insured retained his old vehicle that was originally the named vehicle under the policy; the old vehicle was insured under the policy for a period of thirty days; the insured was killed in the new car within the thirty-day period, and the evidence established that the insured reasonably expected uninsured motorist coverage on the old vehicle to be separate and apart from the coverage on the new car; the policy provided additional uninsured motorist coverage on the newly acquired car and that coverage could be stacked. *Bird v. State Farm Mut. Auto. Ins. Co.*, 2007-NMCA-088, 142 N.M. 346, 165 P.3d 343, cert. denied, 2007-NMCERT-007, 142 N.M. 329, 165 P.3d 326.

**Policy complying with any state's responsibility laws effectively incorporates New Mexico's.** — Where a motor vehicle liability insurance policy provided in clear terms that the insurance which it afforded shall comply with the provisions of the Motor Vehicle Financial Responsibility Law of any state or province which shall be applicable with respect to any such liability arising out of the ownership, maintenance or use of the automobile to the extent of the coverage and limits of liability required by such law, but in no event in excess of the limits of liability stated in the policy, the pertinent provisions of the New Mexico Motor Vehicle Safety Responsibility Act, Sections 64-24-42 to 64-42-104, 1953 Comp. (similar to this part), were effectively incorporated into the policy and the liability of the insurer was the same as though the policy had been written under and in compliance with such act. *Farmers Ins. Exch. v. Ledesma*, 214 F.2d 495 (10th Cir. 1954).

**Legislative intent.** — By enacting the financial responsibility laws, Sections 64-24-42 through 64-24-107, 1953 Comp. (similar to 66-5-201 to 66-5-239 NMSA 1978), the legislature intended to eliminate the financially irresponsible driver from the highways and to provide for the giving of security and proof of financial responsibility by owners and operators of motor vehicles. 1969 Op. Att'y Gen. No. 69-119.

## II. ISSUANCE OF POLICIES.

**The obligation to deal fairly and honestly** rests equally upon the insurer and the insured. *Modisette v. Foundation Reserve Ins. Co., Inc.*, 1967-NMSC-094, 77 N.M. 661, 427 P.2d 21.

**An application for insurance is a mere offer or proposal for a contract** of insurance. Before a contract of insurance is effected and any contractual relationship exists between the parties, it is necessary that the application be accepted by the

insurer, since insurance companies are not compelled to accept every application presented and may stipulate upon what terms and for what period of time the risk will be accepted. *Modisette v. Foundation Reserve Ins. Co., Inc.*, 1967-NMSC-094, 77 N.M. 661, 427 P.2d 21.

**Insurer has right to set up its own standards,** to avail itself of its own experience and the experience of others, to secure information from the applicant, and to rely upon the information furnished as true and to govern its actions accordingly. *Modisette v. Foundation Reserve Ins. Co., Inc.*, 1967-NMSC-094, 77 N.M. 661, 427 P.2d 21.

**Parties' intent irrelevant if misrepresentations made.** — The general rule is that if misrepresentations be made, or information withheld, and such be material to the contract, then it makes no difference whether the party acted fraudulently, negligently or innocently. *Modisette v. Foundation Reserve Ins. Co., Inc.*, 1967-NMSC-094, 77 N.M. 661, 427 P.2d 21.

**A representation or concealment of a fact is material** if it operates as an inducement to the insurer to enter into the contract, where, except for such inducement, it would not have done so, or would have charged a higher premium. *Modisette v. Foundation Reserve Ins. Co., Inc.*, 1967-NMSC-094, 77 N.M. 661, 427 P.2d 21.

**Agent's disregard of information considered in determining issue of materiality.** — Aside from any question which may be present as to the effect of the failure of defendant's agent to make further inquiry to avoid being misled, the agent's disregard of the information that was given may properly be considered by the court in determining the issue of materiality and reliance. *Tsosie v. Foundation Reserve Ins. Co., Inc.*, 1967-NMSC-095, 77 N.M. 671, 427 P.2d 29.

**In absence of waiver, policy voided if withheld information material.** — If the information withheld or the misrepresentations made were material, then insurer was entitled to void the policy, in the absence of waiver or estoppel. *Modisette v. Foundation Reserve Ins. Co., Inc.*, 1967-NMSC-094, 77 N.M. 661, 427 P.2d 21.

**Policy not cancelled for fraud if shown conduct would be unaltered.** — When it is determined that the insurer's conduct would not have been altered in either accepting the risk or in the premium that would have been charged, the conclusion follows that the policy should not be cancelled for fraud. *Tsosie v. Foundation Reserve Ins. Co., Inc.*, 1967-NMSC-095, 77 N.M. 671, 427 P.2d 29.

## III. COVERAGE AND EXCLUSIONS.

**Applicability of initial permission rule.** — An individual working in a business of servicing vehicles, having been given initial permission to use a covered vehicle, was not subject to an exclusion for persons using covered vehicles while in the business of servicing vehicles when an accident occurred while the individual was using the vehicle

solely for personal reasons. *Kitchens v. Houston Gen. Ins. Co.*, 1995-NMSC-031, 119 N.M. 799, 896 P.2d 479.

**Coverage for subsequent permittees.** — Coverage extends to any subsequent permittee operating an insured vehicle as long as the named insured has given his or her initial permission to use the vehicle. This coverage is mandated by the statutory omnibus clause notwithstanding violation of the named insured's restriction on second permittees. *United Servs. Auto. Ass'n v. National Farmers Union Prop. & Cas.*, 1995-NMSC-014, 119 N.M. 397, 891 P.2d 538.

**Scope of coverage provided by omnibus clause.** — The omnibus clause of an insurer's liability policy must provide coverage to any person using the insured vehicle with the owner's consent, without regard to any restrictions or understanding between the parties on the particular use for which the permission was given. *Allstate Ins. Co. v. Jensen*, 1990-NMSC-009, 109 N.M. 584, 788 P.2d 340; *Kitchens v. Houston Gen. Ins. Co.*, 1995-NMSC-031, 119 N.M. 799, 896 P.2d 479.

**Scope of coverage provided by omnibus clause.** — A policy's omnibus clause may not be more restrictive of coverage than the statutory omnibus clause. *United Servs. Auto. Ass'n v. National Farmers Union Prop. & Cas.*, 1995-NMSC-014, 119 N.M. 397, 891 P.2d 538.

**Coverage for punitive damages not required.** — New Mexico's mandatory liability insurance law does not require coverage for punitive damages because its intent was only to require drivers to demonstrate a minimal amount of financial responsibility as a condition for driving in the state. *State Farm Mut. Auto. Ins. Co. v. Progressive Specialty Ins. Co.*, 2001-NMCA-101, 131 N.M. 304, 35 P.3d 309.

**Application of proration among several policies** is not contrary to the statutory provisions for minimum coverage and is different from a policy provision for a dollar for dollar reduction of coverage. *Am. Mut. Ins. Co. v. Romero*, 428 F.2d 870 (10th Cir. 1970).

**Financial Responsibility Law was not applicable to insurance provisions** under a car rental agreement which had the effect of excluding drivers under the age of 21 years from coverage. *Peterson v. Romero*, 1975-NMCA-127, 88 N.M. 483, 542 P.2d 434.

**Third party not insured if loan violates long-standing family prohibition.** — Where father, owner of car, loaned car to son who loaned car to friend in violation of long-standing family prohibition, there was no implied or express permission as required by Section 64-24-87, 1953 Comp. (similar to this section), and third person was not insured when involved in car accident. *Western Cas. & Sur. Co. v. Grice*, 422 F.2d 921 (10th Cir. 1970).

**Coverage limits when insured operates non-owned vehicle.** — No New Mexico statute, including the Mandatory Financial Responsibility Act, requires aggregation of

liability coverage limits when the insured is operating a non-owned vehicle. *Slack v. Robinson*, 2003-NMCA-083, 134 N.M. 6, 71 P.3d 514, cert. quashed, 135 N.M. 321, 88 P.3d 263 (2004).

**No physical contract exclusion unenforceable.** — The exclusion of uninsured motorist coverage in a Texas insurance policy for accidents not involving physical contact between the covered and the uninsured vehicle violates New Mexico's public policy of protecting accident victims and will not be enforced in New Mexico. *Demir v. Farmers Texas County Mut. Ins. Co.*, 2006-NMCA-091, 140 N.M. 162, 140 P.3d 1111.

**Exclusion endorsement signed by all named insureds.** — A driver's exclusion endorsement that does not bear the signatures of all named insureds is ineffective under this part. *Tafoya v. Western Farm Bureau Ins. Co.*, 1994-NMSC-035, 117 N.M. 385, 872 P.2d 358.

**Insured and household exclusions invalid.** — Insured and household exclusions contained in motor vehicle liability policies are contrary to public policy and are, therefore, invalid exclusions. *Estep v. State Farm Mut. Auto. Ins. Co.*, 1985-NMSC-069, 103 N.M. 105, 703 P.2d 882 (1985); *State Farm Mut. Auto. Ins. Co. v. Ballard*, 2002-NMSC-030, 132 N.M. 696, 54 P.3d 537.

**Coverage for domestic partners.** — Because there is no express statutory language or indication of legislative intent in New Mexico that domestic partners must be included in the definition of "family member" for purposes of automobile insurance coverage, excluding domestic partners from the definition of "family member" is not invalid as contrary to the public policy of the state of New Mexico. *Hartford Ins. Co. v. Cline*, 2006-NMSC-033, 140 N.M. 16, 139 P.3d 176.

**Law reviews.** — For comment, "A Third-Party Claimant Becomes an Insured: Hovet v. Allstate and the Expanding Right to Sue Under New Mexico's Insurance Code," see 35 N.M. L. Rev. 651 (2005).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7 Am. Jur. 2d Automobile Insurance §§ 20 to 40; 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 156 to 160.

Liability of insurer under compulsory statutory vehicle liability policy, to injured third persons, notwithstanding insured's failure to comply with policy conditions, as measured by policy limits or by limits of Motor Vehicle Financial Responsibility Act, 29 A.L.R.2d 817.

Trailers as affecting automobile insurance, 31 A.L.R.2d 298, 65 A.L.R.3d 804.

Failure to give notice, or other lack of cooperation by insured, as defense to action against compulsory liability insurer by injured member of public, 31 A.L.R.2d 645.

Validity of Motor Vehicle Financial Responsibility Act, 35 A.L.R.2d 1011, 2 A.L.R.5th 725.

Operator's liability policy issued in compliance with financial responsibility statute, 88 A.L.R.2d 995.

Policy provision extending coverage to comply with Financial Responsibility Act as applicable to insured's first accident, 8 A.L.R.3d 388.

Temporary automobile insurance pending issuance of policy, 12 A.L.R.3d 1304.

Cancellation of compulsory or "financial responsibility" automobile insurance, 44 A.L.R.4th 13.

60 C.J.S. Motor Vehicles §§ 110, 111.

Conflicts of laws in determination of coverage under automobile liability insurance policy. 110 A.L.R.5th 465.

What constitutes bad faith on part of insurer rendering it liable for statutory penalty imposed for bad faith in failure to pay, or delay in paying, insured’s claim – particular conduct of insurer. 115 A.L.R.5th 589.

What constitutes bad faith on part of insurer rendering it liable for statutory penalty imposed for bad faith in failure to pay, or delay in paying, insured’s claim – particular grounds for denial of claim: matters relating to policy. 116 A.L.R.5th 247.

What constitutes bad faith on part of insurer rendering it liable for statutory penalty imposed for bad faith in failure to pay, or delay in paying, insured’s claim – particular grounds for denial of claim: risks, causes and extent of laoss, injury, disability or death. 123 A.L.R.5th 259.

Conduct or inaction by insurer constituting waiver of, or creating estoppel to assert, right of subrogation. 125 A.L.R.5th 1.

Conduct or inaction by insurer constituting waiver or, or creating estoppel to assert, defense of consent to settle provision under insurance policy. 16 A.L.R.6th 491.

## 66-5-201.1. Purpose.

The legislature is aware that motor vehicle accidents in New Mexico can result in catastrophic financial hardship. The purpose of the Mandatory Financial Responsibility Act is to require residents of New Mexico who own and operate motor vehicles upon the highways of the state either to have the ability to respond in damages to accidents arising out of the use and operation of a motor vehicle or to obtain a motor vehicle insurance policy.

**History:** Laws 1983, ch. 318, § 2; 1998, ch. 34, § 4.

**ANNOTATIONS**

**The 1998 amendment,** effective July 1, 1998, deleted "the state of" preceding "New Mexico" in two places; deleted "and encourage" following "require"; and inserted "either" and substituted "or to obtain a motor vehicle insurance policy" for "it is the intent that the risks and financial burdens of motor vehicle accidents be equitably distributed among all owners and opeartors of motor vehicles within the state".

**The Mandatory Financial Responsibility Act does not render a vehicle owner vicariously liable for injuries caused by the owner's vehicle when driven by another.** *Maya v. GMC Corp.*, 953 F.Supp. 1245 (D.N.M. 1996).

**Geographical coverage.** — The Mandatory Financial Responsibility Act was primarily adopted in response to the legislative concern about motor vehicle accidents in this state. Nothing in the overall statutory scheme indicates that the legislature intended to mandate broader geographical coverage for uninsured motorist coverage than for other types of coverage. *Dominguez v. Dairyland Ins. Co.*, 1997-NMCA-065, 123 N.M. 448, 942 P.2d 191, cert. denied, 123 N.M. 446, 942 P.2d 189.

**Purpose of the act.** — This section reflects the view that the required automobile liability insurance is for the benefit of the public generally, innocent victims of automobile accidents, as well as the insured. *Allstate Ins. Co. v. Jensen*, 1990-NMSC-009, 109 N.M. 584, 788 P.2d 340.

**Legislative intent.** — By enacting the financial responsibility laws, Sections 64-24-42 through 64-24-107, 1953 Comp. (similar to 66-5-201 to 66-5-239 NMSA 1978), the legislature intended to eliminate the financially irresponsible driver from the highways and to provide for the giving of security and proof of financial responsibility by owners and operators of motor vehicles. 1969 Op. Att'y Gen. No. 69-119.

## 66-5-202. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1990, ch. 120, § 45 repealed 66-5-202 NMSA 1978, as enacted by Laws 1978, ch. 35, § 278, relating to definitions, effective July 1, 1990. For provisions of former section, *see* the 1989 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* 66-1-4.1 to 66-1-4.20 NMSA 1978.

## 66-5-203. Director to administer act.

The director shall:

A. administer and enforce the provisions of the Mandatory Financial Responsibility Act and may make rules and regulations necessary for its administration;

B. receive and consider any pertinent information upon request of persons aggrieved by his orders or acts under any of the provisions of the Mandatory Financial Responsibility Act; and

C. prescribe and provide suitable forms requisite or deemed necessary for the purposes of the Mandatory Financial Responsibility Act.

**History:** 1953 Comp., § 64-5-203, enacted by Laws 1978, ch. 35, § 279; 1983, ch. 318, § 4.

## 66-5-204. Administrative and court review.

An owner of a motor vehicle registered in New Mexico who is aggrieved by the decision of the secretary made under the provisions of the Mandatory Financial Responsibility Act may appeal to the administrative hearings office for a hearing to be held within twenty days after the receipt by the administrative hearings office of the appeal. A person who continues to be aggrieved after the decision made by the hearing officer may appeal that decision in the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

**History:** 1978 Comp., § 66-5-204, enacted by Laws 1983, ch. 318, § 5; 1998, ch. 55, § 79; 1999, ch. 265, § 80; 2015, ch. 73, § 32.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1983, ch. 318, § 5, repealed former 66-5-204 NMSA 1978, relating to court review of orders or acts of the director of the motor vehicle division, and enacted the above section.

**Cross references.** — For appeal of final decisions by agencies to district court, *see* 39-3-1.1 NMSA 1978.

For procedures governing administrative appeals to the district court, *see* Rule 1-074 NMRA.

**The 2015 amendment,** effective July 1, 2015, authorized the owner of a motor vehicle registered in New Mexico who is aggrieved by the decision of the secretary made under the provisions of the Mandatory Financial Responsibility Act to appeal to the administrative hearings office; after "appeal to the", deleted "hearing officer of the department" and added "administrative hearings office", after "twenty days", deleted "of" and added "after", after "receipt by the", deleted "department" and added "administrative hearings office", and after "continues", added "to be".

**The 1999 amendment,** effective July 1, 1999, substituted "secretary" for "director", "department" for "division", and "Section 39-3-1.1" for "Section 12-8A-1".

**The 1998 amendment,** effective September 1, 1998, rewrote the second and third sentences and made minor stylistic changes throughout the section.

**Review under former law.** — Since the state has a legitimate interest in protecting the users of its highways by placing reasonable restrictions upon the driving privilege, the concept of requiring proof of financial responsibility from licensees was clearly constitutional, and such proof could be required, without a hearing to avoid suspension, following an accident; the judicial review provided for in Section 64-24-44, 1953 Comp. (similar to this section), was adequate to assure compliance with the law by the administrative officials. *Quetawki v. Prentice*, 303 F. Supp. 737 (D.N.M. 1968).

## 66-5-205. Vehicle must be insured or owner must have evidence of financial responsibility; penalties.

A. No owner shall permit the operation of an uninsured motor vehicle, or a motor vehicle for which evidence of financial responsibility as was affirmed to the department is not currently valid, upon the streets or highways of New Mexico unless the vehicle is specifically exempted from the provisions of the Mandatory Financial Responsibility Act.

B. No person shall drive an uninsured motor vehicle, or a motor vehicle for which evidence of financial responsibility as was affirmed to the department is not currently valid, upon the streets or highways of New Mexico unless the person is specifically exempted from the provisions of the Mandatory Financial Responsibility Act.

C. For the purposes of the Mandatory Financial Responsibility Act, "uninsured motor vehicle" means a motor vehicle for which a motor vehicle insurance policy meeting the requirements of the laws of New Mexico and of the secretary, or a surety bond or evidence of a sufficient cash deposit with the state treasurer, is not in effect.

D. The provisions of the Mandatory Financial Responsibility Act requiring the deposit of evidence of financial responsibility as provided in Section 66-5-218 NMSA 1978, subject to certain exemptions, may apply with respect to persons who have been convicted of or forfeited bail for certain offenses under motor vehicle laws or who have failed to pay judgments or written settlement agreements upon causes of action arising out of ownership, maintenance or use of vehicles of a type subject to registration under the laws of New Mexico.

E. Any person who violates the provisions of this section is guilty of a misdemeanor as provided in Section 66-8-7 NMSA 1978.

F. A person charged with violating the provisions of this section shall not be convicted if the person produces, in court, evidence of financial responsibility valid at the time of issuance of the citation.

**History:** 1978 Comp., § 66-5-205, enacted by Laws 1983, ch. 318, § 6; 1991, ch. 192, § 2; 1998, ch. 34, § 5; 2013, ch. 204, § 4.

## ANNOTATIONS

**Repeals and reenactments.** — Laws 1983, ch. 318, § 6, repealed former 66-5-205 NMSA 1978, relating to application of the provisions of the Financial Responsibility Act, and enacted the above section.

**The 2013 amendment,** effective July 1, 2013, provided that a person cited for no insurance shall not be convicted if the person produces evidence of compliance in court; in Subsection C, after "secretary", added "or a surety bond or evidence of a sufficient cash deposit with the state treasurer" and after "is not in effect", deleted "or a surety bond or evidence of a sufficient cash deposit with the state treasurer"; in Subsection E, after "misdemeanor", deleted "and upon conviction shall be sentence to a fine not to exceed three hundred dollars ($300)" and added "as provided in Section 66-8-7 NMSA 1978"; and added Subsection F.

**The 1998 amendment,** effective July 1, 1998, in Subsections A and B, substituted "department" for "division" and in Subsection C, substituted "insurance" for "liability policy or a certified motor vehicle liability" and "secretary" for "director".

**The 1991 amendment,** effective June 14, 1991, added "penalties" at the end of the catchline and added Subsection E.

**A state may require insurance as a precondition to issuance of a license,** and consequently, the expense entailed in posting security after an accident is equally legitimate and does not discriminate against the poor without rational justification. *Trujillo v. DeBaca*, 320 F. Supp. 1038 (D.N.M. 1970).

**Unknown liability insurance compliance status provides reasonable suspicion to make investigatory stop.** — Where police officer, on routine patrol, entered the license plate number of the vehicle defendant was driving into the patrol car's mobile data terminal, which remotely accesses records maintained by the motor vehicle department regarding the insurance compliance status of vehicles registered in New Mexico, and where the query returned a result indicating that the compliance status of the vehicle was unknown, there was a reasonable basis for suspecting that defendant's vehicle was probably uninsured in violation of 66-5-205(B) NMSA 1978, and therefore the officer had reasonable suspicion to stop defendant's vehicle. *State v. Yazzie*, 2016-NMSC-026, *rev'g* 2014-NMCA-108, 336 P.3d 984.

**Law reviews.** — For note, "Negligent Failure of an Insurer to Settle a Claim - New Mexico Does Not Recognize This Cause of Action: Ambassador Insurance Company v. St. Paul Fire & Marine Insurance Company," see 17 N.M.L. Rev. 197 (1987).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Combining or "stacking" uninsured motorist coverages provided in policies issued by different insurers to different insureds, 28 A.L.R.4th 362.

## 66-5-205.1. Uninsured motorist citation; requirements to be followed at time of accident; subsequent procedures; insurer notification requirements; suspension procedures.

A. When a law enforcement officer issues a driver who is involved in an accident a citation for failure to comply with the provisions of the Mandatory Financial Responsibility Act [66-5-201 to 66-5-239 NMSA 1978], the law enforcement officer shall at the same time:

(1) issue to the driver cited a temporary operation sticker, valid for thirty days after the date the sticker is issued, and forward by mail or delivery to the department a duplicate of the issued sticker; and

(2) remove the license plate from the vehicle and send it with the duplicate of the sticker to the department or, if it cannot be removed, permanently deface the plate.

B. The department shall return or replace, in its discretion, a license plate removed under the provisions of Paragraph (2) of Subsection A of this section or replace a license plate defaced under that paragraph when the person cited for failure to comply with the provisions of the Mandatory Financial Responsibility Act furnishes proof of compliance to the department and pays to the division a reinstatement fee of twenty-five dollars ($25.00). If a person to whom the temporary operation sticker is issued furnishes to the department, within fifteen days after the issuance of the sticker, evidence of financial responsibility in compliance with the Mandatory Financial Responsibility Act and in effect on the date and at the time of the issuance of the sticker, the department shall replace or return the license plate and waive the twenty-five dollar ($25.00) reinstatement fee.

C. The secretary shall adopt and promulgate rules prescribing the form and use of the sticker required to be issued under Subsection A of this section.

D. The secretary shall adopt and promulgate rules requiring insurance carriers to report canceled, terminated and newly issued motor vehicle insurance policies each month to the department. Information pertaining to each motor vehicle shall be made a part of that vehicle file for one year.

E. Within ten days of notification by the insurance carrier of a termination or cancellation of a motor vehicle insurance policy, the department shall demand satisfactory evidence from the owner of the motor vehicle that he meets the requirements of the Mandatory Financial Responsibility Act. Failure to provide evidence of financial responsibility within twenty days after the department has mailed its demand for proof:

(1) constitutes reasonable grounds to believe that a person is operating a motor vehicle in violation of the provisions of Section 66-5-205 NMSA 1978; and

(2) requires the department to suspend the person's registration as provided in Section 66-5-236 NMSA 1978.

F. The department shall notify the superintendent of insurance if an insurance carrier fails to provide monthly reports to the department regarding motor vehicle insurance policy information as required by Subsection D of this section.

**History:** Laws 1989, ch. 214, § 1; 1998, ch. 34, § 6; 1999, ch. 145, § 1; 2001, ch. 229, § 1.

**ANNOTATIONS**

**The 2001 amendment,** effective July 1, 2001, inserted the provision that newly issued motor vehicle insurance policies be reported to the department in Subsection D; and substituted "monthly reports to the department regarding motor vehicle insurance policy information" for "notification of cancellation or terminations" in Subsection F.

**The 1999 amendment,** effective June 18, 1999, added "insurer notification requirements; suspension procedures" in the section heading, deleted "personally" following "officer shall" in Subsection A; substituted "rules" for "regulations" in Subsection C; in Subsection D, substituted "shall" for "may" and "rules" for "regulations" in the first sentence and deleted the former last sentence which read: "Notification of termination or cancellation made under such a regulation is not grounds for revocation of the motor vehicle registration"; and added Subsections E and F.

**The 1998 amendment,** effective July 1, 1998, substituted "department" for "division" throughout the section; in Subsections C and D substituted "secretary" for "director" and, also, in Subsection D, substituted "insurance" for "liability policy or certified motor vehicle liability" following "motor vehicle" in the first sentence.

## 66-5-205.2. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1991, ch. 174, § 1 repealed 66-5-205.2 NMSA 1978, as enacted by Laws 1989, ch. 214, § 2, relating to uninsured motorist involved in accident and procedures for reporting possible claim, effective June 14, 1991. For provisions of former section, *see* the 1990 NMSA 1978 on *NMOneSource.com.*

## 66-5-205.3. Motor vehicle insurance policy; procedures.

A. A motor vehicle insurance policy shall:

(1) designate by explicit description or by appropriate reference all motor vehicles to which coverage is to be granted; and

(2) insure the person named in the policy and a person using any such motor vehicle with the express or implied permission of the named insured against loss from the liability imposed by law for damages arising out of the ownership, maintenance or use of the motor vehicle within a jurisdiction, subject to the requirement to provide evidence of financial responsibility pursuant to the Mandatory Financial Responsibility Act [66-5-201 to 66-5-239 NMSA 1978].

B. A motor vehicle insurance policy shall insure a person named as insured against loss from the liability imposed upon the person by law for damages arising out of the use, with the express or implied permission of the owner or person in lawful possession, of a motor vehicle that the insured person does not own. The policy shall insure the person within the same territorial limits and in compliance with the requirement of evidence of financial responsibility as set forth in the Mandatory Financial Responsibility Act with respect to a motor vehicle insurance policy. A motor vehicle liability policy in which the described vehicle is a private passenger car is not required to provide liability insurance coverage for a non-owned truck tractor designed to pull a trailer or semitrailer.

C. Permitted exceptions to coverage otherwise required by Subsections A and B of this section may include the following if excluded by the motor vehicle insurance policy:

(1) an automobile business exclusion;

(2) a furnished for regular use exclusion;

(3) a vehicle rented for business use exclusion if the exclusion is contained in the motor vehicle insurance policy and is enforceable;

(4) an exclusion for any liability of the United States government or its agencies when the provisions of the Federal Tort Claims Act apply;

(5) an exclusion for liability of the insured under any workers' compensation law;

(6) an exclusion for damages to property owned by, rented to, in the charge of or transported by an insured; provided, however, that this exclusion shall not apply to damages to a residence or private garage rented by an insured; and

(7) an exclusion to apply when a vehicle is rented to others or used to carry persons for a charge, including when a vehicle is being used while logged on to a transportation network company's digital network or while a driver provides a prearranged ride; provided, however, that this exclusion shall not apply to use on a shared expense basis.

D. The motor vehicle insurance policy shall state the name and address of the insured, the coverage afforded by the policy, the premium charged, the policy period and the limits of liability. The policy shall also contain an agreement or endorsement that states that the insurance is:

(1) provided in accordance with the coverage defined in the Mandatory Financial Responsibility Act regarding bodily injury and death or property damage or both; and

(2) subject to all the provisions of that act.

E. Every motor vehicle insurance policy shall be subject to the following provisions, which may be contained in the policy:

(1) the policy may not be canceled or annulled as to the liability of the insurance carrier with respect to the insurance required by the Mandatory Financial Responsibility Act by an agreement between the insurance carrier and the insured after the occurrence of the injury or damage;

(2) the satisfaction by the insured of a judgment for injury or damage shall not be a condition precedent to the right or duty of the insurance carrier to pay on account of injury or damage;

(3) the insurance carrier has the right to settle a claim covered by the policy. If the settlement is made in good faith, the amount of the settlement is deductible from the limits of liability specified in the Mandatory Financial Responsibility Act; and

(4) the policy, the declarations page, the written application and a rider or an endorsement that does not conflict with the provisions of the Mandatory Financial Responsibility Act constitute the entire contract between the parties.

F. A binder issued pending the issuance of a motor vehicle insurance policy is deemed to fulfill the requirements for the policy.

**History:** Laws 2003, ch. 171, § 1; 2016, ch. 80, § 23.

## ANNOTATIONS

**Cross references.** — For the Federal Tort Claims Act, *see* 28 U.S.C. § 2671 et seq.

**The 2016 amendment,** effective May 18, 2016, permitted a motor vehicle insurance exception to coverage when a vehicle is being used for a transportation network company; in Subsection C, Paragraph (7), after "to carry persons for a charge", added "including when a vehicle is being used while logged on to a transportation network company’s digital network or while a driver provides a prearranged ride".

**No direct claim.** — The Mandatory Financial Responsibility Act does not state that a person who suffers damages has a direct claim against an insurance company. *Little v. Gill*, 2003-NMCA-103, 134 N.M. 321, 76 P.3d 639.

**The district court's modification of an arbitration award to comply with the terms of plaintiff's insurance policy was supported by substantial evidence.** — Where plaintiff was involved in an auto collision while operating a 2011 Ford truck, and where, at the time of the collision, plaintiff had an automobile insurance policy, which insured three vehicles, including the Ford truck, and included $100,000 in UM/UIM coverage per person per vehicle, and an off-road vehicle insurance policy, which insured plaintiff's Polaris RZR (razor), with defendant insurance company, and where, following the collision, plaintiff filed a complaint against the responsible party, an underinsured motorist, and defendant, and where, in an arbitration proceeding, the arbitration panel awarded plaintiff damages in the amount of $425,000, and where defendant moved to either vacate any award in excess of $275,000 or modify the award to limit it to $275,000 to comport with the terms of plaintiff's automobile insurance policy less a $25,000 settlement from the responsible party, the district court did not err in modifying the arbitration award to $275,000, because plaintiff's policy reflects that she insured three automobiles, each covered for up to $100,000 in damages, and therefore plaintiff may recover up to $300,000 for damages sustained from bodily injury for a single accident, reduced by $25,000 paid by the responsible party. In New Mexico, an insurer may offset its claim payment by the amount of liability proceeds actually received by the insured from the tortfeasor. *Castillo v. Allstate Prop. & Cas. Ins. Co.*, 2023-NMCA-009.

**Law reviews.** — For comment, "A Third-Party Claimant Becomes an Insured: Hovet v. Allstate and the Expanding Right to Sue Under New Mexico Insurance Code," see 35 N.M. L. Rev. 651 (2005).

## 66-5-206. Registration without insurance or evidence of financial responsibility prohibited; suspension required.

A. The department shall not issue or renew the registration for any motor vehicle not covered by a motor vehicle insurance policy or by evidence of financial responsibility currently valid meeting the requirements of the laws of New Mexico and of the secretary, unless specifically exempted from the Mandatory Financial Responsibility Act.

B. Upon a showing by its records or other sufficient evidence that the required insurance or evidence of financial responsibility has not been provided or maintained for a motor vehicle, the department shall suspend its registration of the motor vehicle.

**History:** 1978 Comp., § 66-5-206, enacted by Laws 1983, ch. 318, § 7; 1998, ch. 34, § 7.

**ANNOTATIONS**

**Recompilations.** — Laws 1983, ch. 318, § 7, recompiled former 66-5-206 NMSA 1978, relating to the meaning of "proof of financial responsibility for the future," as 66-5-208 NMSA 1978, effective January 1, 1984.

**The 1998 amendment,** effective July 1, 1998, substituted "department" for "division" throughout the section; and in Subsection A, substituted 'insurance" for "liability policy or a certified motor vehicle liability" following "a motor vehicle" and "secretary" for "director" near the end.

**Automatic suspension provisions constitutional.** — Provisions which provided for the automatic suspension of the license and vehicle registration of any person involved in an accident unless the person furnished proof of financial responsibility and deposited security with the state's division of motor vehicles without a prior determination of fault was not violative of due process of law in violation of the Fourteenth Amendment to the United States constitution but was a reasonable method of advancing the legislative purpose, and could not be attacked for over-breadth. *Trujillo v. DeBaca*, 320 F. Supp. 1038 (D.N.M. 1970).

## 66-5-207. Exempt motor vehicles.

The following motor vehicles are exempt from the Mandatory Financial Responsibility Act:

A. a motor vehicle owned by the United States government, any state or any political subdivision of a state;

B. an implement of husbandry or special mobile equipment that is only incidentally operated on a highway;

C. a motor vehicle operated upon a highway only for the purpose of crossing such highway from one property to another;

D. a commercial motor vehicle registered or proportionally registered in this and any other jurisdiction, provided such motor vehicle is covered by a motor vehicle insurance policy or equivalent coverage or other form of financial responsibility in compliance with the laws of any other jurisdiction in which it is registered;

E. a motor vehicle approved as self-insured by the superintendent of insurance pursuant to Section 66-5-207.1 NMSA 1978; and

F. any motor vehicle when the owner has submitted to the department a signed statement, in the form prescribed by the department, declaring that the vehicle will not be operated on the highways of New Mexico and explaining the reasons therefor.

**History:** 1978 Comp., § 66-5-507, enacted by Laws 1983, ch. 318, § 8; 1986, ch. 111, § 1; 1998, ch. 34, § 8.

## ANNOTATIONS

**Recompilations.** — Laws 1983, ch. 318, § 8, recompiled former 66-5-207 NMSA 1978, relating to the meaning of "judgment," as 66-5-209 NMSA 1978, effective January 1, 1984.

**The 1998 amendment,** effective July 1, 1998, in Subsection D, substituted "insurance" for "liability policy or certified motor vehicle liability" following "a motor vehicle", inserted "equivalent coverage or" following "policy or"; in Subsection F, substituted "department" for "division" twice, and deleted "as may be" following "form"; and made minor stylistic changes.

**Self-insured car rental company exempt.** — A self-insured car rental company was not subject to the requirements of the Mandatory Financial Responsibility Act. *Cordova v. Wolfel*, 1995-NMSC-061, 120 N.M. 557, 903 P.2d 1390.

A regulation on the requirements for obtaining a certificate of self-insurance stating that car rental agreements must provide that the lessor shall be primarily liable and that the lessee shall be secondarily liable under the Mandatory Financial Responsibility Act did not make the Act applicable to a self-insured car rental company, because that interpretation would directly conflict with Subsection E which explicitly exempts self-insured vehicles. *Cordova v. Wolfel*, 1995-NMSC-061, 120 N.M. 557, 903 P.2d 1390.

**Off-highway motor vehicle was exempt from the Mandatory Financial Responsibility Act.** — Where plaintiff was involved in an auto collision while operating a 2011 Ford truck, and where, at the time of the collision, plaintiff had an automobile insurance policy, which insured three vehicles, including the Ford truck, and included $100,000 in UM/UIM coverage per person per vehicle, and an off-road vehicle insurance policy, which insured plaintiff's Polaris RZR (razor), with defendant insurance company, and where, following the collision, plaintiff filed a complaint against the responsible party, an underinsured motorist, and defendant, and where, in an arbitration proceeding, the arbitration panel awarded plaintiff damages in the amount of $425,000, and where defendant moved to either vacate any award in excess of $275,000 or modify the award to limit it to $275,000 to comport with the terms of plaintiff's automobile insurance policy less a $25,000 settlement from the responsible party, and where plaintiff responded that the automobile insurance policy and the off-road vehicle policy should be stacked, entitling her to $400,000 of UM/UIM coverage, which reflected her maximum coverage minus the settlement from the responsible party, the district court did not err in granting defendant's motion, because plaintiff's razor, a motor vehicle primarily intended for off-road use and not licensed or equipped for on-road use, was exempt from the Mandatory Financial Responsibility Act, 66-5-201 to 66-5-239 NMSA 1978, and, as such, defendant was not required to offer UM/UIM coverage on the policy insuring plaintiff's razor. *Castillo v. Allstate Prop. & Cas. Ins. Co.*, 2023-NMCA-009.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 60 C.J.S. Motor Vehicles § 111.

## 66-5-207.1. Self-insurers.

A. The superintendent of insurance shall issue a certificate of self-insurance to any applicant with motor vehicles registered in his name in this state, provided that the applicant has met the same criteria for self-insurance as set by the superintendent of insurance for workmen's compensation liability.

B. Upon not less than five days' notice and a hearing pursuant to such notice, the superintendent upon reasonable grounds may cancel a certificate of self-insurance. Failure to pay any judgment within thirty days after the judgment is final constitutes a reasonable ground for the cancellation of a certificate of self-insurance.

**History:** 1978 Comp., § 66-5-207.1, enacted by Laws 1986, ch. 111, § 2.

**ANNOTATIONS**

**Regulation cannot affect exempt status of self-insured entity.** — A regulation on the requirements for obtaining a certificate of self-insurance stating that car rental agreements must provide that the lessor shall be primarily liable and that the lessee shall be secondarily liable under the Mandatory Financial Responsibility Act did not make the Act applicable to a self-insured car rental company, because that interpretation would directly conflict with Subsection E of Section 66-5-207 NMSA 1978 which explicitly exempts self-insured vehicles. *Cordova v. Wolfel*, 1995-NMSC-061, 120 N.M. 557, 903 P.2d 1390.

## 66-5-208. Evidence of financial responsibility; amounts and conditions.

"Evidence of financial responsibility," as used in the Mandatory Financial Responsibility Act, means evidence of the ability to respond in damages for liability, on account of accidents occurring subsequent to the effective date of the evidence, arising out of the ownership, maintenance or use of a vehicle of a type subject to registration under the laws of New Mexico, in the following amounts:

A. twenty-five thousand dollars ($25,000) because of bodily injury to or death of one person in any one accident;

B. subject to this limit for one person, fifty thousand dollars ($50,000) because of bodily injury to or death of two or more persons in any one accident;

C. ten thousand dollars ($10,000) because of injury to or destruction of property of others in any one accident; and

D. if evidence is in the form of a surety bond or a cash deposit, the total amount shall be sixty thousand dollars ($60,000).

**History:** 1953 Comp., § 64-5-206, enacted by Laws 1978, ch. 35, § 282; 1978 Comp., § 66-5-206, recompiled as § 66-5-208 by Laws 1983, ch. 318, §§ 7, 9.

## ANNOTATIONS

**Repeals.** — Laws 1983, ch. 318, § 42, repealed former 66-5-208 NMSA 1978, relating to proof required upon certain convictions, effective January 1, 1984.

**Private right of action for third parties.** — Beyond the general policy of the Insurance Code to protect anyone injured by unfair insurance practices, a private right of action for third parties is consistent with the specific policy of the New Mexico Mandatory Financial Responsibility Act. *Hovet v. Allstate Ins. Co.*, 2004-NMSC-010, 135 N.M. 397, 89 P.3d 69.

**A policy covering insurance for the future** pursuant to former provisions constituted proof of a driver's future financial responsibility necessary to his continued operation of a vehicle. *Larson v. Occidental Fire & Cas. Co.*, 1968-NMSC-160, 79 N.M. 562, 446 P.2d 210, *overruled on other grounds by Estep v. State Farm Mut. Auto. Ins. Co.*, 1985-NMSC-069, 103 N.M. 105, 703 P.2d 882.

**Tort-feasor driver whose policy limits were statutory minimum** was not an uninsured motorist, so passengers of other car who divided up tort-feasor's insurance equally failed to recover under their host's uninsured motorist clause. The court also said that the legislative intent in providing limits of liability for bodily injury of $10,000 each person, and $20,000 each accident was not that each of the three passengers get $10,000, but to require $20,000 for each accident, and the division of this by three was the proper allocation. *Chafin v. Aetna Ins. Co.*, 550 F.2d 575 (10th Cir. 1976).

**No separate limit for loss of consortium.** — Because New Mexico's financial responsibility statutes do not establish separate limits for loss of consortium claims, clause in insurance policy requiring insurer to furnish statutory limits for such claims was not triggered. *Nollen v. Reynolds*, 1998-NMCA-108, 125 N.M. 387, 962 P.2d 633.

**Construction of motor vehicle liability insurance policy provision.** — A limited de novo appeal provision in an insurance contract violates public policy and is therefore void. Unequal access to an appeal is unenforceable. *Padilla v. State Farm Mut. Auto. Ins. Co.*, 2003-NMSC-011, 133 N.M. 661, 68 P.3d 901.

**Liability in a no-fault state.** — A passenger injured in an automobile accident in Hawaii was not entitled to uninsured motorist benefits since Hawaii's no-fault statutes prohibited collection of noneconomic damages; it was not a lack of insurance that restricted liability, rather it was the law of Hawaii that had that effect. *State Farm Auto. Ins. Co. v. Ovitz*, 1994-NMSC-047, 117 N.M. 547, 873 P.2d 979.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 156, 160.

## 66-5-209. Meaning of "judgment".

"Judgment," as used in the Mandatory Financial Responsibility Act, means any judgment which becomes final by expiration without appeal of the time within which an appeal might have been perfected or by final affirmation on appeal rendered by a court of competent jurisdiction of any state or of the United States, upon a cause of action arising out of the ownership, maintenance or use of any motor vehicle of a type subject to registration under the laws of New Mexico, for damages, including damages for care and loss of services, because of bodily injury to or death of any person or for damages because of injury to or destruction of property, including the loss of use thereof, or upon a cause of action on an agreement of settlement for such damages.

**History:** 1953 Comp., § 64-5-207, enacted by Laws 1978, ch. 35, § 283; 1978 Comp., 64-5-207, recompiled as § 66-5-209 by Laws 1983, ch. 318, §§ 8, 10.

**ANNOTATIONS**

**Repeals.** — Laws 1983, ch. 318, § 42, repealed former 66-5-209 NMSA 1978, relating to suspension of license until proof is furnished, effective January 1, 1984.

**No separate limit for loss of consortium.** — Because New Mexico's financial responsibility statutes do not establish separate limits for loss of consortium claims, clause in insurance policy requiring insurer to furnish statutory limits for such claims was not triggered. *Nollen v. Reynolds*, 1998-NMCA-108, 125 N.M. 387, 962 P.2d 633.

## 66-5-210. Settlement agreements for payment of damages.

A. Any two or more of the persons involved in or affected by a motor vehicle accident may at any time enter into a written settlement agreement for the payment of an agreed amount with respect to all claims of any of the persons because of bodily injury to or the death of any person or property damage arising from the accident, which agreement may provide for payment in installments, and may file a signed copy of the settlement agreement with the division.

B. In the event of a default in any payment under such settlement agreement and upon notice of default, the division shall take action suspending the license or registration, or both if the owner and driver are the same person, or any nonresident's operating privilege of the person in default.

C. The suspension shall remain in effect and the license or registration shall not be restored until:

(1) the person in default has paid the balance of the agreed amount; or

(2) one year has elapsed following the effective date of the suspension and evidence satisfactory to the division has been filed with it that during such period no action at law upon the settlement agreement has been instituted and is pending.

**History:** 1953 Comp., § 64-24-70.1, enacted by Laws 1971, ch. 59, § 2; recompiled as 1953 Comp., § 64-5-212 by Laws 1978, ch. 35, § 288; 1978 Comp., § 66-5-212, recompiled as § 66-5-210 by Laws 1983, ch. 318, § 11.

**ANNOTATIONS**

**Repeals.** — Laws 1983, ch. 318, § 42, repealed former 66-5-210 NMSA 1978, relating to actions in respect to unlicensed persons, effective January 1, 1984.

**Cross reference.** — For the Structured Settlement Protection Act, *see* 39-1A-1 NMSA 1978.

## 66-5-211. When courts to report nonpayment of judgments.

Whenever any person fails within thirty days to satisfy any judgment, then upon the written request of the judgment creditor or his attorney it shall be the duty of the clerk of the court, or the judge of a court which has no clerk, in which any such judgment is rendered within this state to forward to the division immediately upon such request a certified copy of such judgment.

**History:** 1953 Comp., § 64-5-213, enacted by Laws 1978, ch. 35, § 289; 1978 Comp., § 66-5-213, recompiled as § 66-5-211 by Laws 1983, ch. 318, § 41.

**ANNOTATIONS**

**Repeals.** — Laws 1983, ch. 318, § 43, repealed former 66-5-211 NMSA 1978, relating to actions in respect to nonresidents, effective January 1, 1984.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 158.

## 66-5-212. Application to nonresidents, unlicensed drivers, unregistered vehicles and accidents in other states.

A. When a nonresident's operating privilege is suspended under the Mandatory Financial Responsibility Act and Sections 66-5-301 through 66-5-303 NMSA 1978, the division may transmit a certified copy of the record of such action to the official in charge of the issuance of licenses and registration certificates in the state in which the nonresident resides if the law of the other state provides for action in relation thereto similar to that provided for in Subsection B of this section.

B. Upon receipt of certification that the driving privilege of a resident of New Mexico has been suspended or revoked in any other state pursuant to a law providing for its suspension or revocation for failure to pay settlement agreements or judgments arising out of a motor vehicle accident or for failure to give and maintain evidence of financial responsibility under circumstances which would require the division to suspend a nonresident's operating privilege had the accident occurred in New Mexico, the division may suspend the license of the resident if he was the driver and all of his registrations if he was the owner of a motor vehicle involved in the accident. The suspension shall continue until the resident furnishes evidence of his compliance with the law of the other state.

**History:** § 64-5-214 enacted by Laws 1978, ch. 35, § 290; 1978 Comp., § 66-5-214, recompiled as § 66-5-212 by Laws 1983, ch. 318, § 12.

**ANNOTATIONS**

**Recompilations.** — Laws 1983, ch. 318, § 11, recompiled former 66-5-212 NMSA 1978, relating to settlement agreements for payment of damages, as 66-5-210 NMSA 1978, effective January 1, 1984.

**Compiler's notes.** — Although the catchline refers to "unlicensed drivers" and "unregistered vehicles," all such provisions were deleted by the 1983 amendment.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 107, 156.

60 C.J.S. Motor Vehicles §§ 110, 152.

## 66-5-213. Exception when consent granted by judgment creditor.

If the judgment creditor or party to a settlement agreement consents in writing in such form as the division may prescribe that the judgment debtor or other party to a settlement agreement be allowed license and registration or nonresident's operating privilege, the same may be allowed by the division, in its discretion, for six months from the date of the consent and thereafter until the consent is revoked in writing, notwithstanding default in the payment of the judgment or of any installments thereof prescribed in Section 66-5-216 NMSA 1978 or default in payment of a settlement agreement, provided the judgment debtor or the released party to a settlement agreement furnishes evidence of financial responsibility.

**History:** 1953 Comp., § 64-5-218, enacted by Laws 1978, ch. 35, § 294; 1978 Comp., § 66-5-218, recompiled as § 66-5-213 by Laws 1983, ch. 318, § 13.

**ANNOTATIONS**

**Recompilations.** — Laws 1983, ch. 318, § 41, recompiled former 66-5-213 NMSA 1978, relating to when courts are to report nonpayment of judgments, as 66-5-211 NMSA 1978, effective January 1, 1984.

## 66-5-214. Discharge in bankruptcy.

A discharge in bankruptcy shall not relieve any person from any of the requirements of the Mandatory Financial Responsibility Act.

**History:** 1953 Comp., § 64-24-78, enacted by Laws 1955, ch. 182, § 315; recompiled as 1953 Comp., § 64-5-221, by Laws 1978, ch. 35, § 297; 1978 Comp., § 66-5-221, recompiled as § 66-5-214 by Laws 1983, ch. 318, § 14.

**ANNOTATIONS**

**Recompilations.** — Laws 1983, ch. 318, § 12, recompiled former 66-5-214 NMSA 1978, relating to application of the Mandatory Financial Responsibility Act to nonresidents, unlicensed drivers, unregistered vehicles and accidents in other states, as 66-5-212 NMSA 1978, effective January 1, 1984.

**A motorist cannot obtain restoration of driver's license** by obtaining discharge of the judgment taken against him in the bankruptcy court. 1957 Op. Att'y Gen. No. 57-76.

**Revocation is based on state's considered public policy.** — This section intended that a driver's license should remain revoked regardless of whether the motorist had obtained his discharge in bankruptcy, and such is based on the considered public policy of this state. 1957 Op. Att'y Gen. No. 57-76.

## 66-5-215. Payments sufficient to satisfy requirements.

A. Judgments herein referred to shall, for the purpose of the Mandatory Financial Responsibility Act only, be deemed satisfied when:

(1) twenty-five thousand dollars ($25,000) has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of one person as the result of any one accident;

(2) subject to the limit of twenty-five thousand dollars ($25,000) because of bodily injury to or death of one person, the sum of fifty thousand dollars ($50,000) has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of two or more persons as the result of any one accident; or

(3) ten thousand dollars ($10,000) has been credited upon any judgment or judgments rendered in excess of that amount because of injury to or destruction of property of others as a result of any one accident.

B. However, payments made in settlements of any claims because of bodily injury, death or property damage arising from the accident shall be credited in reduction of the amounts provided for in this section.

**History:** 1953 Comp., § 64-5-222, enacted by Laws 1978, ch. 35, § 298; 1978 Comp., § 66-5-222, recompiled as § 66-5-215 by Laws 1983, ch. 318, § 15.

**ANNOTATIONS**

**Repeals.** — Laws 1983, ch. 318, § 42, repealed former 66-5-215 NMSA 1978, relating to suspension for nonpayment of judgment, effective January 1, 1984.

**"Property".** — The word "property", as that term is used in this section and in the uninsured motorist statute, included coverage of a house damaged when an uninsured motorist negligently drove his vehicle so as to cause damage to the house. *Richards v. Mountain States Mut. Cas. Co.*, 1986-NMSC-021, 104 N.M. 47, 716 P.2d 238.

**Policy held ambiguous.** — Where on its face, a limitation clause appears to limit liability for bodily injury to the statutory minimums per person or per occurrence, but nowhere in the contract is there any mention of the effect of multiple premiums paid under one policy insuring more than one vehicle, the policy is ambiguous. *Lopez v. Foundation Reserve Ins. Co., Inc.*, 1982-NMSC-034, 98 N.M. 166, 646 P.2d 1230.

**Arbitration award provision valid.** — A limited de novo appeal provision in an insurance contract violates public policy and is therefore void. Unequal access to an appeal is unenforceable. *Padilla v. State Farm Mut. Auto. Ins. Co.*, 2003-NMSC-011, 133 N.M. 661, 68 P.3d 901.

**Arbitration provision providing for limited de novo appeal substantively unconscionable.** — The limited de novo appeal provision in an insurance contract, providing for mandatory arbitration which would be binding on both parties for any award of damages not exceeding the limits of the Mandatory Financial Responsibility Act but providing for de novo appeal by either party of awards over that amount, violates public policy and is void as substantively unconscionable. *Padilla v. State Farm Mut. Auto. Ins. Co.*, 2003-NMSC-011, 133 N.M. 661, 68 P.3d 901.

## 66-5-216. Installment payment of judgments; default.

A. A judgment debtor, upon due notice to the judgment creditor, may apply to the court in which the judgment was rendered for the privilege of paying the judgment in installments, and the court in its discretion and without prejudice to any other legal remedies which the judgment creditor may have may so order and fix the amounts and times of payment of the installments.

B. The division shall not suspend a license, registration or nonresident's operating privilege and shall restore any license, registration or nonresident's operating privilege

suspended following nonpayment of a judgment when the judgment debtor gives evidence of financial responsibility and obtains an order permitting the payment of the judgment in installments and while the payment of any installments is not in default.

**History:** 1953 Comp., § 64-5-223, enacted by Laws 1978, ch. 35, § 299; 1978 Comp., § 66-5-223, recompiled as § 66-5-216 by Laws 1983, ch. 318, § 16.

**ANNOTATIONS**

**Repeals.** — Laws 1983, ch. 318, § 42, repealed former 66-5-216 NMSA 1978, relating to an exception in relation to government vehicles, effective January 1, 1984.

## 66-5-217. Action if breach of agreement.

In the event the judgment debtor fails to pay any installment as specified by the order, upon notice of the default the division shall forthwith suspend the license, registration or nonresident's operating privilege of the judgment debtor until the judgment is satisfied as provided in the Mandatory Financial Responsibility Act [66-5-201 to 66-5-239 NMSA 1978].

**History:** 1953 Comp., § 64-5-224, enacted by Laws 1978, ch. 35, § 300; 1978 Comp., § 66-5-224, recompiled as § 66-5-217 by Laws 1983, ch. 318, § 17.

**ANNOTATIONS**

**Repeals.** — Laws 1983, ch. 318, § 42, repealed former 66-5-217, relating to limited licenses or registrations, effective January 1, 1984.

**Ability to satisfy the judgment is essence** of financial responsibility laws and if the judgment may be satisfied by the tort-feasor's own insurer, the driving privileges may not be suspended. 1969 Op. Att'y Gen. No. 69-119.

**Suspension even though victim's insurance policy included uninsured motorist coverage.** — The language of the former version of Section 64-24-76, 1953 Comp., did not preclude suspension of the driving privileges of an uninsured motorist adjudged liable for damages awarded to an accident victim merely because the victim's insurance policy included uninsured motorist risk coverage. 1969 Op. Att'y Gen. No. 69-119.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 158.

## 66-5-218. Alternate methods of giving evidence.

Evidence of financial responsibility, when required under the Mandatory Financial Responsibility Act, may be given by filing:

A. evidence of a motor vehicle insurance policy;

B. a surety bond as provided in Section 66-5-225 NMSA 1978; or

C. a certificate of deposit of money as provided in Section 66-5-226 NMSA 1978.

**History:** 1953 Comp., § 64-5-226, enacted by Laws 1978, ch. 35, § 302; 1978 Comp., § 66-5-226, recompiled as § 66-5-218 by Laws 1983, ch. 318, § 18; 1998, ch. 34, § 9.

**ANNOTATIONS**

**Recompilations.** — Laws 1983, ch. 318, § 13, recompiled former 66-5-218 NMSA 1978, relating to an exception to revocation of license when consent is granted by a judgment creditor, as 66-5-213 NMSA 1978, effective January 1, 1984.

**The 1998 amendment,** effective July 1, 1998, substituted "insurance" for "liability" in Subsection A, deleted Subsection B, relating to evidence of a certified motor vehicle liability policy, and redesignated the following subsections accordingly.

## 66-5-219. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1998, ch. 34, § 19 repealed 66-5-219 NMSA 1978, 1953 Comp. (§ 64-24-84), as enacted by Laws 1955, ch. 182, § 321; recompiled as 1953 Comp., § 64-5-227, by Laws 1978, ch. 35, § 303; 1978 Comp., § 66-5-227, recompiled as 1978 Comp., § 66-5-219 by Laws 1983, ch. 318, § 19, relating to certificate of insurance, effective July 1, 1998. For provisions of former section, *see* the 1997 NMSA 1978 on *NMOneSource.com.*

Laws 1983, ch. 318, § 42, repealed former 66-5-219, relating to exceptions to suspension for nonpayment, effective January 1, 1984.

## 66-5-220. Default by nonresident insurer.

If any insurance carrier not authorized to transact business in New Mexico that has qualified to furnish evidence of financial responsibility defaults in any undertakings or agreements, the department shall not thereafter accept evidence of financial responsibility of that carrier, whether previously filed or thereafter tendered as evidence, so long as the default continues.

**History:** 1953 Comp., § 64-24-86, enacted by Laws 1955, ch. 182, § 323; recompiled as 1953 Comp., § 64-5-229, by Laws 1978, ch. 35, § 305; 1978 Comp., § 66-5-229, recompiled as § 66-5-220 by Laws 1983, ch. 318, § 20; 1998, ch. 34, § 10.

**ANNOTATIONS**

**Repeals.** — Laws 1983, ch. 318, § 42, repealed former 66-5-220, relating to suspension continuing until judgments paid and proof given, effective January 1, 1984.

**The 1998 amendment,** effective July 1, 1998, substituted "that" for "which", "department" for "division", deleted "as" following "accept", "any certificate" following "evidence" and inserted "financial responsibility of".

## 66-5-221. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1998, ch. 34, § 19 repealed 66-5-221 NMSA 1978, 1953 Comp., § 64-5-230, as enacted by Laws 1978, ch. 35, § 306; 1978 Comp., § 66-5-230, recompiled as 1978 Comp., § 66-5-221 by Laws 1983, ch. 318, § 21, relating to certified motor vehicle liability policy; provisions, effective July 1, 1998. For provisions of former section, *see* the 1997 NMSA 1978 on *NMOneSource.com.*

## 66-5-222. Driver exclusion endorsement form.

Any motor vehicle insurance policy may be endorsed to exclude a named driver from coverage. The endorsement shall be signed by at least one named insured. Endorsements shall be substantially similar to the following form:

"DRIVER EXCLUSION ENDORSEMENT

Nothing herein contained shall be held to alter, vary, waive or extend any of the terms, conditions, agreements or limits of the undermentioned policy other than as stated herein below.

Effective - 12:01 a.m., standard time. Attached to and forming part of Policy No. issued to by

(name of insured)

(insert name of insurance company)

In consideration of the premium for which the policy is written, it is agreed that the company shall not be liable and no liability or obligation of any kind shall be attached to the company for losses or damages sustained after the effective date of this endorsement while any motor vehicle insured hereinunder is driven or operated by .

(name of excluded driver(s))

Date: _____ Name insured(s)

_____

(signature)

_____".

(signature)

**History:** 1953 Comp., § 64-24-87.1, enacted by Laws 1977, ch. 61, § 2; recompiled as 1953 Comp., § 64-5-231, by Laws 1978, ch. 35, § 307; 1978 Comp., § 66-5-231, recompiled as § 66-5-222, by Laws 1983, ch. 318, § 41; 1998, ch. 34, § 11.

## ANNOTATIONS

**Recompilations.** — Laws 1983, ch. 318, § 15, recompiled former 66-5-222 NMSA 1978, relating to amount of payments sufficient to satisfy requirements of the Mandatory Financial Responsibility Act, as 66-5-215 NMSA 1978, effective January 1, 1984.

**The 1998 amendment,** effective July 1, 1998, in the section heading, substituted "Driver" for "Drivers"; added the introductory language preceding the endorsement form; and substituted "Driver" for "Drivers" in the endorsement form heading.

**Applicable to uninsured coverage.** — A driver exclusion agreement applies to uninsured motorist coverage as well as liability coverage. *Moore v. State Farm Mut. Auto. Ins. Co.*, 1994-NMCA-165, 119 N.M. 122, 888 P.2d 1004, cert. denied, 889 P.2d 203.

**A clear and unambiguous drivers exclusion endorsement** modeled on the one provided in this section relieves insurers from obligations of any kind under liability provisions of the policy such that insurers are not liable for injuries sustained by a passenger while an excluded driver is driving the insured's vehicle. *Garza v. Glen Falls Ins. Co.*, 1986-NMSC-094, 105 N.M. 220, 731 P.2d 363.

**Written disclosure of coverage required.** — A named-driver exclusion was not a basis to reject uninsured motorist coverage for a class-one insured because the uninsured motorist coverage for class-one insureds was not expressly excluded. *Phoenix Indem. Ins. Co. v. Pulis*, 2000-NMSC-023, 129 N.M. 395, 9 P.3d 639.

**Exclusion endorsement signed by all named insureds.** — A driver's exclusion endorsement that does not bear the signatures of all named insureds is ineffective under this part. *Tafoya v. Western Farm Bureau Ins. Co.*, 1994-NMSC-035, 117 N.M. 385, 872 P.2d 358.

**Signatures of named insured.** — All named insureds on a policy are required to sign the driver's exclusion agreement for the exclusion to be valid. *Moore v. State Farm Mut. Auto. Ins. Co.*, 1994-NMCA-165, 119 N.M. 122, 888 P.2d 1004, cert. denied, 889 P.2d 203.

**Consideration for exclusion.** — The insurer was not in violation of the consideration requirement because it failed to reduce the premium charged for the elimination of the policyholder's son as a driver since the driver exclusion agreement clearly stated that the insurer would not continue to insure the parents unless they excluded their son as a driver; in consideration for excluding the son as a driver, the father was able to continue purchasing insurance coverage from the insurer. *Moore v. State Farm Mut. Auto. Ins. Co.*, 1994-NMCA-165, 119 N.M. 122, 888 P.2d 1004, cert. denied, 889 P.2d 203.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Validity, construction and application of "named driver exclusion" in automobile insurance policy, 33 A.L.R.5th 121.

## 66-5-223. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1998, ch. 34, § 19 repealed 66-5-223 NMSA 1978, 1953 Comp., § 64-5-232, enacted by Laws 1978, ch. 35, § 308; 1978 Comp., § 66-5-232, recompiled as 1978 Comp., § 66-5-223 by Laws 1983, ch. 318, § 22, relating to notice of cancellation or termination of certified policy, effective July 1, 1998. For provisions of former section, *see* the 1997 NMSA 1978 on *NMOneSource.com.*

## 66-5-224. Act not to affect other policies.

A. The Mandatory Financial Responsibility Act does not apply to or affect policies of motor vehicle insurance against liability which may now or hereafter be required by any other law of New Mexico, and such policies, if they contain an agreement or are endorsed to conform with the requirements of the Mandatory Financial Responsibility Act, may be considered as evidence of financial responsibility under that act.

B. The Mandatory Financial Responsibility Act does not apply to or affect policies insuring solely the insured named in the policy against liability resulting from the maintenance or use by persons in the insured's employ or on his behalf of motor vehicles not owned by the insured.

**History:** 1953 Comp., § 64-5-233, enacted by Laws 1978, ch. 35, § 309; 1978 Comp., § 66-5-233, recompiled as § 66-5-224 by Laws 1983, ch. 318, § 23.

**ANNOTATIONS**

**Recompilations.** — Laws 1983, ch. 318, § 17, recompiled former 66-5-224 NMSA 1978, relating to actions in the case of breach of agreement, as 66-5-217 NMSA 1978, effective January 1, 1984.

## 66-5-225. Bond as evidence.

Evidence of financial responsibility may be demonstrated by a surety bond of a surety company authorized to transact business within New Mexico.

**History:** 1953 Comp., § 64-5-234, enacted by Laws 1978, ch. 35, § 310; 1978 Comp., § 66-5-234, recompiled as § 66-5-225 by Laws 1983, ch. 318, § 24.

**ANNOTATIONS**

**Repeals.** — Laws 1983, ch. 318, § 42, repealed former 66-5-225, relating to proof to be furnished for each registered vehicle, effective January 1, 1984.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 60 C.J.S. Motor Vehicles §§ 110, 111.

## 66-5-226. Cash deposit as evidence.

Evidence of financial responsibility may be demonstrated by the certificate of the state treasurer that the person named in the certificate has deposited with him sixty thousand dollars ($60,000) in cash.

**History:** 1953 Comp., § 6A-24-93, enacted by Laws 1955, ch. 182, § 330; 1965, ch. 13, § 5; recompiled as 1953 Comp., § 64-5-237 by Laws 1978, ch. 35, § 313; 1978 Comp., § 66-5-237, recompiled as § 66-5-226 by Laws 1983, ch. 318, § 25.

**ANNOTATIONS**

**Recompilations.** — Laws 1983, ch. 318, § 18, recompileds former 66-5-226 NMSA 1978, relating to alternate methods of giving proof, as 66-5-218 NMSA 1978, effective January 1, 1984.

## 66-5-227. Application of cash deposit.

The cash deposit provided for in Section 66-5-226 NMSA 1978 shall be held by the state treasurer to satisfy, in accordance with the provisions of the Mandatory Financial Responsibility Act, any execution on a judgment issued against the person making the deposit, for damages, including damages for care and loss of services because of bodily injury to or death of any person or for damages because of injury to or destruction of property, including the loss of use thereof, resulting from the ownership, maintenance, use or operation of a motor vehicle of a type subject to registration under the laws of New Mexico after the deposit was made. Money so deposited shall not be

subject to attachment or execution unless such attachment or execution arises out of a suit for damages as provided in this section.

**History:** 1953 Comp., § 64-5-238, enacted by Laws 1978, ch. 35, § 314; 1978 Comp., § 66-5-238, recompiled as § 66-5-227 by Laws 1983, ch. 318, § 26.

**ANNOTATIONS**

**Recompilations.** — Laws 1983, ch. 318, § 19, recompiled former 66-5-227 NMSA 1978, relating to certificate of insurance as proof, as 66-5-219 NMSA 1978, effective January 1, 1984. Section 66-5-219 NMSA 1978 was subsequently repealed by Laws 1998, ch. 34, § 19, effective July 1, 1998.

## 66-5-228. Substitution of evidence.

The department shall consent to the cancellation of any bond or the department shall direct and the state treasurer shall return any money to the person entitled thereto upon the substitution and acceptance of any other adequate evidence of financial responsibility as set forth in Section 66-5-218 NMSA 1978.

**History:** 1953 Comp., § 64-5-240, enacted by Laws 1978, ch. 35, § 316; 1978 Comp., § 66-5-240, recompiled as § 66-5-228 by Laws 1983, ch. 318, § 27; 1998, ch. 34, § 12.

**ANNOTATIONS**

**Repeals.** — Laws 1983, ch. 318, § 42, repealed former 66-5-228 NMSA 1978, relating to certificate furnished by nonresident as proof, effective January 1, 1984.

**The 1998 amendment,** effective July 1, 1998, substituted "department" for "division" twice, deleted "or certified motor vehicle liability policy" following "bond", and deleted "Subsection B, C or D of" following "forth in".

## 66-5-229. Duration of evidence; when filing of evidence may be waived.

A. Except as provided in Subsection B of this section, the department shall, upon request, consent to the immediate cancellation of any bond or the department shall direct and the state treasurer shall return to the person entitled to it any money deposited pursuant to the Mandatory Financial Responsibility Act as evidence of financial responsibility or the department shall waive the requirement of filing evidence of financial responsibility in any of the following events:

(1) after one year of providing satisfactory evidence as specified in Section 66-5-218 NMSA 1978;

(2) the death of the person on whose behalf evidence was filed or the permanent incapacity of the person to operate a motor vehicle; or

(3) the person who has filed evidence surrenders the person's license and registration to the department.

B. The department shall not consent to the cancellation of any bond or the return of any money or waive the requirement of filing evidence of financial responsibility in the event any action for damages upon a liability covered by the evidence is then pending or any judgment upon any such liability is then unsatisfied or in the event the person who has filed the bond or deposited the money has, within one year immediately preceding the request, been involved as a driver or owner in any motor vehicle accident resulting in injury or damage to the person or property of others. An affidavit of the applicant as to the nonexistence of such facts or that the applicant has been released from all of the applicant's liability or has been finally adjudicated not to be liable for such injury or damage shall be sufficient evidence thereof in the absence of evidence to the contrary in the records of the department.

C. An owner or operator of a vehicle subject to the Mandatory Financial Responsibility Act shall carry evidence of financial responsibility as defined by that act in the vehicle at all times while the vehicle is in operation on the highways of this state.

D. When financial responsibility is satisfied through coverage under a motor vehicle insurance policy, the owner's or operator's carrying of evidence in print or accessible through a portable electronic device is acceptable. An owner or operator of a vehicle who provides evidence of financial responsibility through a portable electronic device:

(1) assumes all liability for any resulting damage to the portable electronic device; and

(2) is presumed not to consent to provide access to a law enforcement officer to any other information stored in the portable electronic device.

E. The failure to comply with Subsection C of this section is a misdemeanor punishable as set forth in Section 66-8-7 NMSA 1978 unless the person charged with violating that subsection produces in court evidence of financial responsibility valid at the time of issuance of the citation.

**History:** 1953 Comp., § 64-5-242, enacted by Laws 1978, ch. 35, § 318; 1978 Comp., § 66-5-242, recompiled as § 66-5-229 by Laws 1983, ch. 318, § 28; 1991, ch. 192, § 3; 1998, ch. 34, § 13; 2019, ch. 154, § 1.

## ANNOTATIONS

**Recompilations.** — Laws 1983, ch. 318, § 20, recompiled former 66-5-229 NMSA 1978, relating to default by a nonresident insurer, as 66-5-220 NMSA 1978, effective January 1, 1984.

**The 2019 amendment,** effective June 14, 2019, permitted the carrying of electronic evidence of financial responsibility; added a new Subsection D; and in Subsection E, after "comply with", deleted "this subsection shall be" and added "Subsection C of this section is".

**The 1998 amendment,** effective July 1, 1998, rewrote the section heading; substituted "department" for "division" throughout the section; in the introductory language of Subsection A, deleted "certified motor vehicle liability policy or" following "bond or"; inserted "of financial responsibility" near the end of the paragraph; in Paragraph A(1), substituted "specified" for "required", deleted "Subsection B, C or D of" following "in" and "and upon the deposit with the division of evidence of financial responsibility as set forth in Subsection A of that section" following "1978"; in Paragraphs A(2) and (3), deleted "in the event of" at the beginning; in Paragraph A(3), substituted "filed" for "given"; and in Subsection B, inserted "or waive the requirement of filing evidence of financial responsibility" near the beginning of the first sentence.

**The 1991 amendment,** effective June 14, 1991, substituted "the penalty set forth in Section 66-8-7 NMSA 1978" for "a fine of not more than one hundred dollars ($100) or imprisonment in the county jail for a definite term of less than thirty days or by such imprisonment and fine in the discretion of the judge" in the second sentence in Subsection C.

## 66-5-230. Surrender of license and registration.

A. Any person whose license or registration is suspended under any provision of the Mandatory Financial Responsibility Act or whose policy of insurance or bond, when required under the Mandatory Financial Responsibility Act, is canceled or terminated shall immediately return his license or registration to the division. If any person fails to return to the division the license or registration as provided in this section, the division shall forthwith notify the person by certified mail that within ten days after receipt of such notice he shall return to the division by mail his license or registration or shall be subject to the full penalty prescribed by law.

B. Any person willfully failing to return the license or registration as required in Subsection A of this section shall be fined not more than one thousand dollars ($1,000) or imprisoned not to exceed six months or both.

**History:** 1953 Comp., § 64-5-244, enacted by Laws 1978, ch. 35, § 320; 1978 Comp., § 66-5-244, recompiled as § 66-5-230 by Laws 1983, ch. 318, § 29; 1985, ch. 47, § 2.

**ANNOTATIONS**

**Recompilations.** — Laws 1983, ch. 318, § 21, recompiles former 66-5-230 NMSA 1978, relating to the definition of "motor vehicle liability policy," as 66-5-221 NMSA 1978, effective January 1, 1984. Section 66-5-221 NMSA 1978 was subsequently repealed by Laws 1998, ch. 34, § 19, effective July 1, 1998.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 60 C.J.S. Motor Vehicles § 164.23.

## 66-5-231. Forged evidence.

Any person who forges or, without authority, signs any evidence of financial responsibility or who files or offers for filing any such evidence knowing or having reason to believe that it is forged or signed without authority shall be fined not more than one thousand dollars ($1,000) or imprisoned for not more than one year or both.

**History:** 1953 Comp., § 64-5-245, enacted by Laws 1978, ch. 35, § 321; 1978 Comp., § 66-5-245, recompiled as § 66-5-231 by Laws 1983, ch. 318, § 30.

**ANNOTATIONS**

**Recompilations.** — Laws 1983, ch. 318, § 41, recompiled former 66-5-231 NMSA 1978, relating to drivers exclusion endorsement form, as 66-5-222 NMSA 1978, effective January 1, 1984.

**Meaning of "forges".** — The word "forges", means that defendant actually altered the document, as opposed to having knowingly presented an altered document without having altered it himself. *State v. Morrison*, 1999-NMCA-041, 127 N.M. 63, 976 P.2d 1015.

## 66-5-232. Sampling; letter to owner.

A. The department, at various times as it considers necessary or appropriate to assure compliance with the Mandatory Financial Responsibility Act, shall select for financial responsibility affirmation an appropriate sample number of the motor vehicles registered in New Mexico. The department is authorized to emphasize, in accordance with rules adopted by the department, for affirmation of financial responsibility, individuals whose affirmations of financial responsibility have previously been found to be incorrect.

B. When a motor vehicle is selected for financial responsibility affirmation under Subsection A of this section, the department shall mail an affirmation form to the registered owner of the motor vehicle notifying him that his motor vehicle has been selected for financial responsibility affirmation and requiring him to respond and to affirm, by at least one signature shown on the affirmation form, the existence of evidence satisfying the financial responsibility requirements of the Mandatory Financial Responsibility Act for the motor vehicle.

C. Failure by an owner to return the affirmation of financial responsibility to the department within fifteen days after mailing by the department or a determination by the department that an affirmation is not accurate constitutes reasonable grounds under Section 66-5-235 NMSA 1978 to believe that a person is operating a motor vehicle in violation of Section 66-5-205 NMSA 1978 or has falsely affirmed the existence of means of satisfying the financial responsibility requirements of the Mandatory Financial Responsibility Act.

D. The department may investigate all affirmations required by the Mandatory Financial Responsibility Act returned to the department. If the owner affirms the existence of a motor vehicle insurance policy covering the motor vehicle, the department may forward the affirmation to the listed insurer to determine whether the affirmation is correct. An insurer shall mail notification to the department within twenty working days of receipt of the affirmation inquiry in the event the affirmation is not correct. The notification shall be prima facie evidence of failure to satisfy the financial responsibility requirements of the Mandatory Financial Responsibility Act. The department may determine the correctness of affirmation of other means of satisfying the financial responsibility requirements of that act for the motor vehicle.

E. The department may use accident reports as basic material for the construction of its sampling procedure.

F. No civil liability shall accrue to the insurer or any of its employees for reports made to the department under this section when the reports are made in good faith based on the most recent information available to the insurer.

G. The affirmation form used when sampling shall require the report of the name of the company issuing the policy, the policy number or any other information that identifies the policy.

**History:** 1978 Comp., § 66-5-232, enacted by Laws 1983, ch. 318, § 31; 1998, ch. 34, § 14.

**ANNOTATIONS**

**Recompilations.** — Laws 1983, ch. 318, § 22, recompiled former 66-5-232 NMSA 1978, relating to notice of cancellation or termination of certified policy, as 66-5-223 NMSA 1978, effective January 1, 1984. Section 66-5-223 NMSA 1978 was subsequently repealed by Laws 1998, ch. 34, § 19, effective July 1, 1998.

**The 1998 amendment,** effective July 1, 1998, substituted "department" for "division" throughout the section and in Subsection D, substituted "insurance" for "liability policy or certified motor vehicle liability" preceding "policy" in the second sentence.

## 66-5-233. Affirmation form.

The affirmation of financial responsibility required under Sections 66-5-208, 66-5-225 and 66-5-226 NMSA 1978 shall be in a form prescribed by the department and shall require an applicant to provide such information as may be required by the department. If a person affirms the existence of a motor vehicle insurance policy, the affirmation form shall require him to report at least the name of the insurer issuing the policy and the policy number.

**History:** 1978 Comp., § 66-5-233, enacted by Laws 1983, ch. 318, § 32; 1998, ch. 34, § 15.

**ANNOTATIONS**

**Recompilations.** — Laws 1983, ch. 318, § 23, recompiled former 66-5-233 NMSA 1978, relating to construction of the Mandatory Financial Responsibility Act so as not to affect other policies, as 66-5-224 NMSA 1978, effective January 1, 1984.

**The 1998 amendment,** effective July 1, 1998, substituted "department" for "division" twice and substituted "insurance" for "liability policy or certified motor vehicle liability" following "motor vehicle" in the last sentence.

## 66-5-234. Registration; application and renewal.

A. The department shall indicate in boldface print on every new application form for registration and every registration form that the owner of the motor vehicle affirms that he is financially responsible within the meaning of the Mandatory Financial Responsibility Act. The payment of the registration fee and acceptance by the department of the application for registration shall be affirmation by the owner of the registered vehicle that he has complied with the requirements of that act.

B. The department shall not renew the registration of a motor vehicle unless the owner of the motor vehicle affirms the existence of a motor vehicle insurance policy covering the motor vehicle or the existence of some other means of satisfying the financial responsibility requirements of the Mandatory Financial Responsibility Act for the motor vehicle.

**History:** 1978 Comp., § 66-5-234, enacted by Laws 1983, ch. 318, § 33; 1998, ch. 34, § 16.

**ANNOTATIONS**

**Recompilations.** — Laws 1983, ch. 318, § 24, recompiled former 66-5-234 NMSA 1978, relating to bond as proof, as 66-5-225 NMSA 1978, effective January 1, 1984.

**The 1998 amendment,** effective July 1, 1998, substituted "department" for "division" throughout the section and in Subsection B, substituted "insurance" for "liability policy or certified motor vehicle liability" preceding "policy".

## 66-5-235. False affirmation; violation.

When the department has reasonable grounds to believe that a person is operating a motor vehicle in violation of Section 66-5-205 NMSA 1978 or has falsely affirmed the existence of a motor vehicle insurance policy or the existence of some other means of satisfying the financial responsibility requirements of the Mandatory Financial Responsibility Act, the department shall demand satisfactory evidence from the person that the person meets the requirements of that act as provided in Section 66-5-233 NMSA 1978. If the person cannot provide evidence of financial responsibility within twenty days after receipt of the department's demand for satisfactory proof of financial responsibility, the department may suspend the person's registration as provided in Section 66-5-236 NMSA 1978.

**History:** 1978 Comp., § 66-5-235, enacted by Laws 1983, ch. 318, § 34; 1989, ch. 235, § 1; 1991, ch. 192, § 4; 1998, ch. 34, § 17.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1983, ch. 318, § 34, repealed former 66-5-235 NMSA 1978, relating to when a bond shall constitute the lien, and enacts the above section.

**The 1998 amendment,** effective July 1, 1998, in the first sentence, substituted "department" for "division" twice and substituted "insurance" for "liability policy, a certified motor vehicle liability"; and in the second sentence, substituted "department's" for "division's" and substituted "department may suspend the person's registration as provided in Section 66-5-236 NMSA 1978" for "division may notify the district attorney of the county in which the person resides of the division's belief that violations of the Mandatory Financial Responsibility Act were or are being committed by that person".

**The 1991 amendment,** effective June 14, 1991, deleted "penalties" at the end of the catchline; deleted former Subsection B, which read "Any person who violates Section 66-5-205 NMSA 1978 is guilty of a misdemeanor and upon conviction shall be sentenced to a fine not to exceed three hundred dollars ($300)"; and made a related stylistic change.

**The 1989 amendment,** effective June 16, 1989, added "penalties" to the catchline, designated the formerly undesignated provisions as Subsection A, and added Subsection B.

## 66-5-236. Suspension for nonpayment of judgment or for false affirmation.

A. Except as otherwise provided, the secretary shall suspend:

(1) the motor vehicle registration for all motor vehicles and the driver's license of any person against whom a judgment has been rendered, the department being in receipt of a certified copy of the judgment on a form provided by the department; or

(2) the registration for a period not to exceed one year of a person who is operating a motor vehicle in violation of Section 66-5-205 NMSA 1978 or falsely affirms the existence of a motor vehicle insurance policy or some other means of satisfying the financial responsibility requirements of the Mandatory Financial Responsibility Act, but only if evidence of financial responsibility is not submitted within twenty days after the date of the mailing of the department's demand for that evidence. The department shall notify the person that the person may request a hearing before the administrative hearings office within twenty days after the date of the mailing of the department's demand.

B. The registration shall remain suspended and shall not be renewed, nor shall any registration be issued thereafter in the name of that person, unless and until every judgment is stayed, satisfied in full or to the extent provided in the Mandatory Financial Responsibility Act and evidence of financial responsibility as required in Section 66-5-218 NMSA 1978 is provided to the department.

**History:** 1978 Comp., § 66-5-236, enacted by Laws 1983, ch. 318, § 35; 1998, ch. 34, § 18; 2015, ch. 73, § 33.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1983, ch. 318, § 35, repealed former 66-5-236 NMSA 1978, relating to action on bond, and enacts the above section.

**The 2015 amendment,** effective July 1, 2015, entitled a licensee whose license has been suspended, because of an outstanding judgment or for failing to comply with the Mandatory Financial Responsibility Act, the right to a hearing before the administrative hearings office; and in Subsection A, Paragraph (2), after "the department’s demand", deleted "therefor" and added "for that evidence", after "notify the person that", deleted "he" and added "the person", after "may request a hearing", added "before the administrative hearings office", and after "department’s demand", deleted "as provided under this subsection".

**The 1998 amendment,** effective July 1, 1998, substituted "department" for "division" throughout the section; in Subsection A, substituted "secretary" for "director"; in Paragraph A(2), substituted "insurance" for "liability policy, a certified motor vehicle liability", "twenty" for "thirty" and "department's" for "division's" twice, and made minor stylistic changes.

## 66-5-237. Past application of act.

The Mandatory Financial Responsibility Act does not apply with respect to any accident or judgment arising therefrom or violation of the motor vehicle laws of New Mexico occurring prior to January 1, 1984.

**History:** 1953 Comp., § 64-5-247, enacted by Laws 1978, ch. 35, § 323; 1978 Comp., § 66-5-247, recompiled as § 66-5-237 by Laws 1983, ch. 318, § 36.

**ANNOTATIONS**

**Recompilations.** — Laws 1983, ch. 318, § 25, recompiled former 66-5-237 NMSA 1978, relating to money or securities as proof, as 66-5-226 NMSA 1978, effective January 1, 1984.

## 66-5-238. Act not to prevent other process.

Nothing in the Mandatory Financial Responsibility Act shall be construed to prevent the plaintiff in any action at law from relying for relief upon the other processes provided by law.

**History:** 1953 Comp., § 64-5-248, enacted by Laws 1978, ch. 35, § 324; 1978 Comp., § 66-5-248, recompiled as § 66-5-238 by Laws 1983, ch. 318, § 37.

**ANNOTATIONS**

**Recompilations.** — Laws 1983, ch. 318, § 26, recompiled former 66-5-238 NMSA 1978, relating to application of deposit, as 66-5-227 NMSA 1978, effective January 1, 1984.

## 66-5-239. No civil liability.

No civil liability shall accrue to the division or any of its employees for reports made in good faith based on the most recent information available to the division.

**History:** 1978 Comp., § 66-5-239, enacted by Laws 1983, ch. 318, § 38.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1983, ch. 318, § 38, repealed former 66-5-239 NMSA 1978, relating to owner of a motor vehicle giving proof for others, and enacts the above section.

**Severability clauses.** — Laws 1983, ch. 318, § 45, provided for the severability of the act if any part or application thereof is held invalid.

## 66-5-240. Recompiled.

### ANNOTATIONS

**Recompilations.** — Laws 1983, ch. 318, § 27, recompiled 66-5-240 NMSA 1978, relating to substitution of proof, as 66-5-228 NMSA 1978, effective January 1, 1984.

## 66-5-241. Repealed.

### ANNOTATIONS

**Repeals.** — Laws 1983, ch. 318, § 43, repealed 66-5-241 NMSA 1978, as enacted by Laws 1978, ch. 35, § 317, relating to other proof of financial responsibility, effective January 1, 1984.

## 66-5-242. Recompiled.

### ANNOTATIONS

**Recompilations.** — Laws 1983, ch. 318, § 28, recompiled 66-5-242 NMSA 1978, relating to duration of proof and when proof may be canceled or returned, as 66-5-229 NMSA 1978, effective January 1, 1984.

## 66-5-243. Repealed.

### ANNOTATIONS

**Repeals.** — Laws 1983, ch. 318, § 43, repealed 66-5-243 NMSA 1978, as enacted by Laws 1978, ch. 35, § 319, relating to transfer of registrations to defeat purpose of the Financial Responsibility Act, effective January 1, 1984.

## 66-5-244. Recompiled.

### ANNOTATIONS

**Recompilations.** — Laws 1983, ch. 318, § 29, recompiled 66-5-244 NMSA 1978, relating to surrender of license and registration, as 66-5-230 NMSA 1978, effective January 1, 1984.

## 66-5-245. Recompiled.

### ANNOTATIONS

**Recompilations.** — Laws 1983, ch. 318, § 30, recompiled 66-5-245 NMSA 1978, relating to forged proof, as 66-5-231 NMSA 1978, effective January 1, 1984.

## 66-5-246. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1983, ch. 318, § 43, repealed 66-5-246 NMSA 1978, as enacted by Laws 1978, ch. 35, § 322, relating to self-insurers, effective January 1, 1984.

## 66-5-247. Recompiled.

**ANNOTATIONS**

**Recompilations.** — Laws 1983, ch. 318, § 36, recompiled 66-5-247 NMSA 1978, relating to past application of the Mandatory Financial Responsibility Act, as 66-5-237 NMSA 1978, effective January 1, 1984.

## 66-5-248. Recompiled.

**ANNOTATIONS**

**Recompilations.** — Laws 1983, ch. 318, § 37, recompiled 66-5-248 NMSA 1978, relating to construction of the Financial Responsibility Act so as not to prevent other process, as 66-5-238 NMSA 1978, effective January 1, 1984.

## 66-5-249 to 66-5-277. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1983, ch. 318, § 44, repealed 66-5-249 to 66-5-277 NMSA 1978, as enacted by Laws 1981, ch. 356, §§ 1 to 29, the Financial Security Act, effective May 18, 1983. For present provisions, *see* 66-5-201 NMSA 1978 et seq.

# PART 4
# UNINSURED MOTORISTS' INSURANCE

## 66-5-301. Insurance against uninsured and unknown motorists; rejection of coverage by the insured.

A. No motor vehicle or automobile liability policy insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any person and for injury to or destruction of property of others arising out of the ownership, maintenance or use of a motor vehicle shall be delivered or issued for delivery in New Mexico with respect to any motor vehicle registered or principally garaged in New Mexico unless coverage is provided therein or supplemental thereto in minimum limits for bodily injury or death and for injury to or destruction of property as set forth in Section 66-5-215 NMSA 1978 and such higher limits as may be desired by the insured, but up to the limits of liability specified in bodily injury and property damage liability provisions of the insured's policy,

for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness or disease, including death, and for injury to or destruction of property resulting therefrom, according to the rules and regulations promulgated by, and under provisions filed with and approved by, the superintendent of insurance.

B. The uninsured motorist coverage described in Subsection A of this section shall include underinsured motorist coverage for persons protected by an insured's policy. For the purposes of this subsection, "underinsured motorist" means an operator of a motor vehicle with respect to the ownership, maintenance or use of which the sum of the limits of liability under all bodily injury liability insurance applicable at the time of the accident is less than the limits of liability under the insured's uninsured motorist coverage. No motor vehicle or automobile liability policy sold in New Mexico shall be required to include underinsured motorist coverage until January 1, 1980.

C. The uninsured motorist coverage shall provide an exclusion of not more than the first two hundred fifty dollars ($250) of loss resulting from injury to or destruction of property of the insured in any one accident. The named insured shall have the right to reject uninsured motorist coverage as described in Subsections A and B of this section; provided that unless the named insured requests such coverage in writing, such coverage need not be provided in or supplemental to a renewal policy where the named insured has rejected the coverage in connection with a policy previously issued to him by the same insurer.

**History:** 1953 Comp., § 64-5-301, enacted by Laws 1978, ch. 35, § 325; 1979, ch. 96, § 1; 1981, ch. 356, § 30; 1983, ch. 318, § 39.

## ANNOTATIONS

**Cross references.** — For the superintendent of insurance, *see* 59A-2-1 NMSA 1978 et seq.

**Severability clauses.** — Laws 1983, ch. 318, § 45, provided for the severability of the act if any part or application thereof is held invalid.

## I. GENERAL CONSIDERATION.

### A. GENERALLY.

**Application of contract law.** — When there are no overriding public policy considerations to the contrary, the obligations of an insurer on an underinsured motorist policy are determined by applying principles of contract law. *March v. Mountain States Mut. Cas. Co.*, 1984-NMSC-092, 101 N.M. 689, 687 P.2d 1040.

**Duty of insurer to disclose policy provisions to all insureds.** — Where the insurer had actual knowledge of the plaintiff’s status as a class-two insured who suffered an

injury that was compensable under the insurer's insurance policy while the plaintiff was a passenger in the insured motor vehicle, the insurer had an affirmative duty to disclose to the plaintiff the availability of insurance coverage and the terms and conditions governing that coverage and where the insurer failed to inform the plaintiff of the plaintiff's rights and responsibilities under the insurance policy, including the existence of a consent-to-settle exclusionary provision in the insurance policy, the insurer breached its duty of disclosure and is equitably estopped from enforcing the consent-to-settle exclusionary provision to deny or limit the plaintiffs' entitlement to underinsured motorist benefits. *Salas v. Mountain States Mut. Cas. Co.*, 2009-NMSC-005, 145 N.M. 542, 202 P.3d 801.

**Rule requiring insurers to adequately disclose limitations of minimum uninsured motorist coverage applied retroactively.** — Where plaintiffs brought putative class actions against their respective insurers, asserting several claims, including violations of the New Mexico Unfair Insurance Practices Act and negligent misrepresentation, alleging that defendants sold them illusory underinsured motorist coverage, and where defendants claimed that a new rule established by the New Mexico Supreme Court, which required insurers to adequately disclose limitations of minimum uninsured motorist coverage, applied prospectively, and, as a result, granted them immunity from prior misrepresentation claims as to minimum limit underinsured motorist coverage, defendants' claims were without merit, because New Mexico applies a presumption that a new rule adopted by a judicial decision in a civil case will operate retroactively, and defendants failed to overcome this presumption. *Belanger v. Allstate Fire & Cas. Ins. Co.*, 588 F.Supp.3d 1249 (D. N.M. 2022); *Schwartz v. State Farm Mut. Auto. Ins. Co.*, 584 F.Supp.3d 1007 (D. N.M. 2022).

**Tort Claims Act limitations do not apply.** — An insured carrying under-insured motorist coverage is legally entitled to damages exceeding the limits established by Section 41-4-19 NMSA 1978 of the Tort Claims Act, when the insured is injured by a government employee driving a government-owned vehicle and makes a claim against her insurer for damages that exceed those limits. *Boradiansky v. State Farm Mut. Auto. Ins. Co.*, 2007-NMSC-015, 141 N.M. 387, 156 P.3d 25.

**Legislative purpose.** — Legislative purpose in creating compulsory uninsured motorist coverage was to place the injured policy-holder in the same position, with regard to the recovery of damages, that he would have been in if the tortfeasor had possessed liability insurance. *Sandoval v. Valdez*, 1978-NMCA-016, 91 N.M. 705, 580 P.2d 131, cert. denied, 91 N.M. 610, 577 P.2d 1256; *Wood v. Millers Nat'l Ins. Co.*, 1981-NMSC-086, 96 N.M. 525, 632 P.2d 1163.

**UM/UIM requirements do not apply to association of counties.** — The requirements of Subsection A of Section 66-5-301 NMSA 1978, pertaining to uninsured and underinsured motorist coverage does not apply to a group of counties that pool their financial resources under Sections 3-62-1 and 3-62-2 NMSA 1978 to satisfy claims against the individual members of the group. *Romero v. Board of Cnty. Comm'rs of*

*Taos Cnty.*, 2011-NMCA-066, 150 N.M. 59, 257 P.3d 404, cert. denied, 2011-NMCERT-005, 150 N.M. 666, 265 P.3d 717.

Where plaintiff, who was an employee of defendant, was injured in a motor vehicle accident while driving a county vehicle during the course of defendant's employment with the county; plaintiff received a settlement for the policy limits of the insurance policy of the driver of the other vehicle and made a claim for UM/UIM coverage against the county's insurance coverage; the county provided liability coverage through a coverage agreement with the New Mexico Association of Counties which maintained a pool of contributions by member counties to fund property and liability losses; and the coverage agreement did not include UM/UIM coverage, the requirements of Subsection A of Section 66-5-301 NMSA 1978 did not apply to the Association of Counties and it was not required to offer UM/UIM coverage. *Romero v. Board of Cnty. Comm'rs of Taos Cnty.*, 2011-NMCA-066, 150 N.M. 59, 257 P.3d 404, cert. denied, 2011-NMCERT-005, 150 N.M. 666, 265 P.3d 717.

**Legislative purpose.** — The purpose of this statute is to assure that in the event of an accident with an underinsured vehicle an insured motorist entitled to compensation will receive at least the sum certain in underinsurance coverage purchased for his or her benefit. To the extent the amount of other available insurance proceeds from responsible underinsured tortfeasors does not equal or exceed the amount of coverage purchased, the underinsured motorist carrier must satisfy the difference. *Fasulo v. State Farm Mut. Auto. Ins. Co.*, 1989-NMSC-060, 108 N.M. 807, 780 P.2d 633.

The uninsured motorist statute was intended to expand insurance coverage and to protect individual members of the public against the hazard of culpable uninsured motorists. *Romero v. Dairyland Ins. Co.*, 1990-NMSC-111, 111 N.M. 154, 803 P.2d 243.

By requiring insurers to offer uninsured motorist coverage, the legislature wanted to encourage insureds to purchase such coverage. *Montano v. Allstate Indem. Co.*, 2004-NMSC-020, 135 N.M. 681, 92 P.3d 1255.

**Design of uninsured motorists' insurance.** — The policy behind uninsured motorist coverage is to compensate those persons injured through no fault of their own. *State Farm Auto. Ins. Co. v. Kiehne*, 1982-NMSC-023, 97 N.M. 470, 641 P.2d 501.

**Policy considerations.** — New Mexico's public policies are to encourage arbitration and to provide protection from uninsured drivers. *State Farm Mut. Auto. Ins. Co. v. Barker*, 2004-NMCA-105, 136 N.M. 211, 96 P.3d 336.

**Financial responsibility law distinguished.** — Policy required under financial responsibility law is for protection of public generally, while uninsured motorist insurance is for individuals who have the foresight to protect themselves against a financially irresponsible motorist. *Farmers Alliance Mut. Ins. Co. v. Bakke*, 619 F.2d 885 (10th Cir. 1980).

**Liberal construction.** — The uninsured motorist statute is liberally interpreted in order to implement its remedial purpose, and language in the statute that provides for an exception to uninsured coverage should be construed strictly to protect the insured. *Romero v. Dairyland Ins. Co.*, 1990-NMSC-111, 111 N.M. 154, 803 P.2d 243.

**Coverage not required in excess policies.** — This section does not apply beyond a motorist's primary automobile insurance policy; therefore, in an excess policy, there is no statutory requirement mandating the inclusion of uninsured motorist or underinsured motorist coverage. *Archunde v. International Surplus Lines Ins. Co.*, 1995-NMCA-110, 120 N.M. 724, 905 P.2d 1128, cert. denied, 120 N.M. 533, 903 P.2d 844.

**Geographical coverage.** — This section does not require limitless geographical motor vehicle insurance coverage against losses caused by negligent, uninsured motorists. *Dominguez v. Dairyland Ins. Co.*, 1997-NMCA-065, 123 N.M. 448, 942 P.2d 191, cert. denied, 123 N.M. 446, 942 P.2d 189.

**Superintendent possesses authority to approve substitute uninsured motorist endorsement** that does not precisely conform to the endorsement prescribed in the uninsured motorist regulations. *McMillian v. Allstate Indem. Co.*, 2004-NMSC-002, 135 N.M. 17, 84 P.3d 65.

**Lawful delegation of authority to superintendent.** — The authority granted by Section 64-24-105, 1953 Comp. (similar to this section), to the superintendent of insurance to prescribe regulations relating to uninsured motorist insurance is a lawful delegation of authority to an administrative agency. *Willey v. Farmers Ins. Group*, 1974-NMSC-054, 86 N.M. 325, 523 P.2d 1351, *overruled on other grounds by Foundation Reserve Ins. Co. v. Marin*, 1990-NMSC-022, 109 N.M. 533, 787 P.2d 452.

**Superintendent has power to prescribe endorsement.** — Under this section, the superintendent of insurance has the power to prescribe a standard or uniform endorsement that governs uninsured motorist coverage. *Sandoval v. Valdez*, 1978-NMCA-016, 91 N.M. 705, 580 P.2d 131, cert. denied, 91 N.M. 610, 577 P.2d 1256 (specially concurring opinion).

**Underinsured motorist property damage coverage.** — New Mexico law requires that insurers offer underinsured motorist coverage for property damage. *Gulbransen v. Progressive Halcyon Ins. Co.*, 2010-NMCA-082, 148 N.M. 585, 241 P.3d 183, cert. denied, 2010-NMCERT-008, 148 N.M. 942, 242 P.3d 1288.

**The uninsured motorists' statute does not require uninsured/underinsured motorist liability coverage in umbrella policies.** *Pielhau v. RLI Ins. Co.*, 2008-NMCA-099, 144 N.M. 554, 189 P.3d 687, cert. quashed, 2009-NMCERT-002, 145 N.M. 705, 204 P.3d 30, *overruled by Progressive Nw. Ins. Co. v. Weed Warrior Servs.*, 2010-NMSC-050, 149 N.M. 157, 245 P.3d 1209.

**Liability in a no-fault state.** — A passenger injured in an automobile accident in Hawaii was not entitled to uninsured motorist benefits since Hawaii's no-fault statutes prohibited collection of noneconomic damages; it was not a lack of insurance that restricted liability, rather it was the law of Hawaii that had that effect. *State Farm Auto. Ins. Co. v. Ovitz*, 1994-NMSC-047, 117 N.M. 547, 873 P.2d 979.

**Absent exclusionary clause, insurer liable for punitive damages.** — Where the language of insured's policy was virtually identical to the language of this section, the insurer was on notice that the prevailing trend, absent an express exclusion in the policy, is to impose liability under uninsured motorists' insurance for punitive damages, and was therefore responsible for punitive damages up to the policy limit since it failed to incorporate an exclusionary clause into the policy. *Stewart v. State Farm Mut. Auto. Ins. Co.*, 1986-NMSC-073, 104 N.M. 744, 726 P.2d 1374.

## B. INVALID PROVISIONS.

**Definition of spouse.** — An insurance policy containing an express exclusion limiting a spouse's coverage based on a definition of "spouse" limited to "your husband or wife while living with you" was void. *Loya v. State Farm Mut. Ins. Co.*, 1994-NMSC-122, 119 N.M. 1, 888 P.2d 447.

**Coverage of consortium claims.** — The provision of a policy limiting coverage for loss of consortium claims to damages caused by "bodily injury to an insured" does not comply with New Mexico's uninsured motorist statute and is unenforceable. *State Farm Mut. Auto Ins. Co. v. Luebbers*, 2005-NMCA-112, 138 N.M. 289, 119 P.3d 169, cert. quashed 140 N.M. 675, 146 P.3d 810.

**Family exclusions.** — Family exclusions in liability and uninsured or underinsured motorist coverage offered through umbrella policies implicate a fundamental principle of justice and are contrary to New Mexico public policy. *GEICO v. Welch*, 2004-NMSC-014, 135 N.M. 452, 90 P.3d 471.

**Exclusion for accidents not involving contact with uninsured vehicle.** — The exclusion of uninsured motorist coverage for accidents not involving physical contact with the uninsured vehicle violates New Mexico public policy and is unenforceable. *Demir v. Farmers Texas Cnty. Mut. Ins. Co.*, 2006-NMCA-091, 140 N.M. 162, 140 P.3d 1111.

**Exclusion of government-owned vehicles.** — An insurance policy provision that excludes all government-owned vehicles from the definition of an "uninsured motor vehicle" is unenforceable because it violates the public policy of the Uninsured Motorist Act. *Boradiansky v. State Farm Mut. Auto. Ins. Co.*, 2007-NMSC-015, 141 N.M. 387, 156 P.3d 25.

**Construction of arbitration clause.** — A limited de novo appeal provision in an insurance contract violates public policy and is therefore void. Unequal access to an

appeal is unenforceable. *Padilla v. State Farm Mut. Auto. Ins. Co.*, 2003-NMSC-011, 133 N.M. 661, 68 P.3d 901.

**Arbitration provision providing for limited de novo appeal substantively unconscionable.** — The limited de novo appeal provision in an insurance contract, providing for mandatory arbitration which would be binding on both parties for any award of damages not exceeding the limits of the Mandatory Financial Responsibility Act but providing for de novo appeal by either party of awards over that amount, violates public policy and is void as substantively unconscionable. *Padilla v. State Farm Mut. Auto. Ins. Co.*, 2003-NMSC-011, 133 N.M. 661, 68 P.3d 901.

**Provision in policy limiting insured's time for bringing action.** — As this section contains no time limit in which the insured can exercise his rights, an exclusionary provision in the liability policy which limits the insured's time for bringing an action to one year violates the three-year statute of limitations of Section 37-1-8 NMSA 1978 for bringing a personal injury suit, deprives the insureds of their uninsured motorist coverage, and is void as against public policy. *Sandoval v. Valdez*, 1978-NMCA-016, 91 N.M. 705, 580 P.2d 131, cert. denied, 91 N.M. 610, 577 P.2d 1256.

**Coverage cannot be limited to particular location or vehicle.** — An exclusion of uninsured motorist coverage, in an automobile insurance policy, when the insured is occupying an uninsured motor vehicle owned by him at the moment of injury is invalid, because it is not the intent of Section 64-24-105, 1953 Comp. (similar to this section), to limit coverage for an insured to a particular location or a particular vehicle. *Chavez v. State Farm Mut. Auto. Ins. Co.*, 1975-NMSC-011, 87 N.M. 327, 533 P.2d 100.

**Underinsured coverage may only be limited by the conditions imposed by statute** and not by additional conditions under the contract such as the household exclusion. *Martinez v. Allstate Ins. Co.*, 1997-NMCA-100, 124 N.M. 36, 946 P.2d 240.

**Exclusion of insured's vehicle invalid.** — Policy provision excluding from uninsured motorist coverage uninsured vehicles owned by or furnished or available for the regular use of the insured or any family member was incompatible with the stated purposes of the uninsured motorist insurance statute, and therefore invalid. *Foundation Reserve Ins. Co. v. Marin*, 1990-NMSC-022, 109 N.M. 533, 787 P.2d 452.

**"Other insurance" provision limiting liability.** — "Other insurance" provision in uninsured motorist clause limiting insurer's liability, in case of bodily injury to insured while occupying a highway vehicle not owned by the insured, to the excess amount over any other similar insurance available to such insured and applicable to such vehicle as primary insurance, and limiting total recovery to the amount by which the limit of liability for the insured exceeded the applicable limit of liability of such other insurance, was invalid, since Section 64-24-105, 1953 Comp. (similar to this section), provided for a minimum, but not a maximum, amount of protection. *Sloan v. Dairyland Ins. Co.*, 1974-NMSC-019, 86 N.M. 65, 519 P.2d 301.

**Dollar for dollar reduction in coverage.** — An application of a policy provision as a dollar for dollar reduction in the coverage under the uninsured motorist clause which results in a direct reduction in its coverage below the minimum provided by statute is invalid. *Am. Mut. Ins. Co. v. Romero*, 428 F.2d 870 (10th Cir. 1970).

**Worker's compensation offset unenforceable.** — An insurance company which provides both workers' compensation insurance and uninsured motorist coverage for a particular automobile accident is not entitled, under a written provision of the uninsured motorist policy, to offset the amount recovered by the injured party under the workers' compensation policy against any amount which may be payable under the uninsured motorist policy. The offset clause of the automobile liability policy contravenes both public policy and the express language of this section, uninsured motorist statute, and is therefore unenforceable. *Continental Ins. Co. v. Fahey*, 1987-NMSC-122, 106 N.M. 603, 747 P.2d 249.

## C. ACTIONS AGAINST INSURER.

**Enforceability of limitations clauses based on the date of the accident.** — A time-to-sue limitations clause in a UM/UIM contract based solely on the date of the accident without consideration of the actual accrual of the right to make a UM/UIM claim is unreasonable and unenforceable as a matter of law. In the absence of a valid contractual provision to the contrary, a suit against a UM/UIM carrier is not barred if brought within six years after the carrier has refused to honor its UM/UIM obligations, as provided in the breach-of-contract limitations period set forth in 37-1-3(A) NMSA 1978. *Whelan v. State Farm Mut. Auto. Ins. Co.*, 2014-NMSC-021.

Where the decedent was in a parked truck when it was hit by a moving vehicle in July 2002; the collision resulted in severe injuries and ultimately in the decedent’s death in March 2004; plaintiff made demand on defendant in June 2011 for underinsured motorist coverage to equalize the UM/UIM coverage under the decedent’s insurance policy; and the policy provided that any suit against the insurer would be barred unless commenced within six years after the date of the accident, the limitation provision was unreasonable and unenforceable as a matter of law. *Whelan v. State Farm Mut. Auto. Ins. Co.*, 2014-NMSC-021.

**Accrual of cause of action.** — Where neither the uninsured motorist statute nor the insurance policy provides otherwise, the six-year limitations period for contract actions begin to accrue on a claim under an uninsured motorist policy on the date of the earliest event in the nature of a breach of the insurance contract. *Brooks v. State Farm Ins. Co.*, 2007-NMCA-033, 141 N.M. 322, 154 P.3d 697.

**"Legally entitled to recover" construed.** — The phrase "legally entitled to recover" in Subsection A merely requires that the determination of liability be made by legal means, and does not constitute a barrier to court action where agreement and arbitration have failed to determine the amount the insured may recover. *Wood v. Millers Nat'l Ins. Co.*, 1981-NMSC-086, 96 N.M. 525, 632 P.2d 1163.

**Estate of deceased worker not entitled to recover under employer's uninsured motorist insurance.** — Where estate of decedent sought to recover damages under decedent's employer's uninsured/underinsured motorist coverage after decedent was killed in the course of his employment by a co-worker operating an employer-owned motor vehicle, decedent's estate was not entitled to recover damages under the employer's uninsured motorist insurance, because the uninsured motorist statute, 66-5-301(A) NMSA 1978, only benefits persons "legally entitled to recover damages from owners or operators of uninsured motor vehicles", and under the Workers' Compensation Act (WCA), 52-1-1 to -70 NMSA 1978, an employee who was injured in a workplace accident caused by an employer or its representative may only seek a remedy authorized under the WCA, and under the WCA such a employee is not legally entitled to recover damages under the uninsured motorist statute. *Vasquez v. American Cas. Co. of Reading*, 2017-NMSC-003.

**Direct suit against insurance carrier authorized.** — This section does not prohibit an insured from bringing a direct action against the insurer nor does it require an action against the uninsured motorist to establish liability and damages. The damages an insured is legally entitled to recover can be determined as easily in a direct suit against the insurance carrier as in a suit against the uninsured motorist. Furthermore, the Rules of Civil Procedure allow the insurance company to demand a joinder of the tort-feasor. *Guess v. Gulf Ins. Co.*, 1981-NMSC-044, 96 N.M. 27, 627 P.2d 869.

**Direct suit against insurer.** — A direct action by an insured against an insurer for uninsured motorist benefits is permissible. *Wood v. Millers Nat'l Ins. Co.*, 1981-NMSC-086, 96 N.M. 525, 632 P.2d 1163.

**Accrual of cause of action.** — The limitations period on the claim of an insured against his uninsured motorist carrier for injuries sustained while occupying an automobile not owned by him would not begin to run until his claim against the automobile's insurer was finally adjudicated. *Ellis v. Cigna Prop. & Cas. Cos.*, 1999-NMSC-034, 128 N.M. 54, 989 P.2d 429.

**Notice of consent-to-settle exclusion.** — Insurer has a duty to put a class 2 insured, once identified, on notice of a consent-to-settle exclusion in its policy and is estopped from enforcing its exclusionary provisions if it fails to put the insured on notice. *Salas v. Mtn. States Mutual Casualty Co.*, 2007-NMCA-161, 143 N.M. 113, 173 P.3d 35, cert. granted, 2007-NMCERT-012, modified by 2009-NMSC-005, 145 N.M. 542, 202 P.3d 801.

**The Uninsured Motorist Act does not cover loss-of-use damages arising from personal property theft.** — Where insureds brought an action against their insurer, seeking a declaratory judgment and asserting claims for breach of contract, breach of implied covenant of good faith and fair dealing, and violations of New Mexico's Unfair Practices Act and Unfair Insurance Practices Act, following the denial of coverage under their automobile and homeowners policies, and where the insurance company moved to dismiss, claiming, inter alia, that the insurance policies do not cover the theft in this case

because the theft that the insureds allege did not involve an uninsured vehicle driven by a third party which is required by both the policy and New Mexico law to recover uninsured motorist benefits, the insureds' claim for uninsured motorist benefits was dismissed, because § 66-5-301 NMSA 1978, as a whole, contradicts the notion that uninsured motorist policies must provide coverage where there has been no "accident," and where the operator of an uninsured motor vehicle did not cause the claimed loss. *Young v. Hartford Cas. Ins. Co.*, 503 F. Supp. 3d 1125 (D. N.M. 2020).

**Punitive damages are not available against an unknown tortfeasor.** — Where plaintiff's vehicle, which was stolen from an auto repair shop, was found unoccupied and crashed, and where plaintiff brought an action against insurer to recover uninsured motorist benefits for damages to the stolen vehicle and for punitive damages, the court denied the request for punitive damages because the purpose of punitive damages is to punish the tortfeasor and to deter others from the commission of like offenses, but when an unknown tortfeasor cannot be punished for his culpable behavior, punitive damages do not have the desired effect of punishment and deterrence. Because punitive damages would fail to serve their function when issued against an unknown tortfeasor, plaintiff was not legally entitled to recover punitive damages under his uninsured motorist coverage. *Ammons v. Sentry Ins. Co*., 431 F. Supp. 3d 1280 (D. N.M. 2019).

## II. REJECTION OF COVERAGE.

**Purchase of UM/UIM coverage in an amount less than the liability coverage in an automobile policy is a partial rejection of UM/UIM coverage.** — When an insured purchased UM/UIM coverage in an amount less than the liability coverage in the automobile insurance policy, the insured has rejected some of the available UM/UIM coverage and if the insured does not execute a valid rejection of UM/UIM coverage, UM/UIM coverage at the liability limits of the insured's policy will be read into the policy. *Romero v. Progressive Nw. Ins. Co.*, 2010-NMCA-024, 148 N.M. 97, 230 P.3d 844, cert. granted, 2010-NMCERT-003, *aff'd*, Jordan v. Allstate Ins. Co., 2010-NMSC-051, 149 N.M. 162, 245 P.3d 1214.

**Insurer must allow insured to make a knowing and intelligent decision to receive or reject the full amount of UM/UIM coverage to which the insured is statutorily entitled.** — In a class-action lawsuit where plaintiff insured claimed that defendant insurance agency's (agency) uniform documentation failed to comply with New Mexico law in obtaining waivers of uninsured/underinsured motorist (UM/UIM) coverage, including stacked coverage, and where the documentation in the record indicated that the agency informed plaintiff that she was entitled to purchase UM/UIM coverage in an amount equal to the policy's liability limits, provided the corresponding premium charge for that maximum amount of UM/UIM coverage, provided the premium cost for the minimum amount of UM/UIM coverage, provided the relative costs for any other levels of UM/UIM coverage offered, and informed plaintiff that she had the right to reject UM/UIM coverage, and where the completed documents show that plaintiff rejected, in writing, the UM/UIM coverage and that this rejection was made part of the insurance policy, the district court erred in denying the agency's motion for summary judgment,

because the uniform documents provided by the agency were legal and valid as a matter of law and in compliance with New Mexico law, and there was clear evidence in the record that plaintiff made an informed decision to reject UM/UIM coverage. *Ullman v. Safeway Ins. Co.*, 2017-NMCA-071, cert. granted.

**Insurer is required to meaningfully offer UM/UIM coverage.** — In consolidated cases, where plaintiffs, whose primary language was Spanish, purchased automobile insurance policies from their respective insurance companies, were provided and signed English-language forms for the rejection of uninsured/underinsured (UM/UIM) coverage, were involved in separate car accidents with underinsured drivers and filed claims of UM/UIM benefits, which were denied by their respective insurance companies, and where each plaintiff sought a declaratory judgment that their policies be reformed to include UM/UIM coverage, asserting several claims, including breach of contract, insurance bad faith and unfair and unconscionable trade practices under the Unfair Practices Act, 57-12-1 to 57-12-26 NMSA 1978, the district court, in the first case, erred by concluding that there was a valid rejection of UM/UIM coverage, because the insurance company provided the plaintiff with information it knew she could not understand and the plaintiff signed the form where the representative told her to do so; the insurer is required to meaningfully offer UM/UIM coverage and the insured must knowingly and intelligently act to reject it before it can be excluded from a policy. The district court did not err in concluding that there was a valid rejection of UM/UIM coverage in the second case, because the insurance company explained the coverages in Spanish and the plaintiff's argument was that the failure to provide the UM/UIM waiver form in Spanish violates New Mexico's requirements for obtaining a valid waiver of UM/UIM; nothing in 66-5-30 NMSA 1978, requires an insurer to provide UM/UIM selection/rejection forms in an insured's primary or preferred language. *Contreras v. Fred Loya Ins. Co.*, 2023-NMCA-019, cert. denied.

**Insurer may not provide misleading and inconsistent information in a renewal policy and escape liability.** — Where the estate of a motorcyclist, who died in an automobile accident and who was a beneficiary of his grandfather's five automobile insurance policies, brought an action against an insurance company, alleging that the insurance company failed to obtain a proper rejection of uninsured and underinsured motorist coverage, the court held that the insurer's use of menus of available premium rates that did not match the attached renewal policies placed the burden on the insured to make sense of the numbers. This practice deprived the insureds of the ability to meaningfully reconsider their coverage options because in attempting to do so, they would have been unable to decipher how the menu matched their invoice. An insurance company cannot confuse an insured with inconsistent renewal policies and then escape liability. *Hart v. State Farm Mut. Auto. Ins. Co.*, 546 F. Supp.3d 1023 (D. N.M. 2021).

**Valid rejection of UM/UIM coverage.** — Where plaintiffs filed two separate lawsuits against insurance company in response to insurance company's refusal to pay uninsured/underinsured (UM/UIM) benefits to them because plaintiffs had rejected UM/UIM coverage, the district court did not err in granting summary judgment to

insurance company in both cases where the evidence established that the insurance company offered the insureds UM/UIM coverage equal to their liability limits, informed the insureds about the premium costs corresponding to the available levels of coverage, obtained written rejections of UM/UIM coverage equal to the liability limits, and incorporated the rejections into the policy in a way that afforded the insureds a fair opportunity to reconsider the decision to reject. The insurance company, therefore, obtained valid rejections of UM/UIM coverage in both cases. *Lueras v. GEICO Gen. Ins. Co.*, 2018-NMCA-051, cert. granted.

**Retroactive application of Jordan v. Allstate Ins. Co.** — The retroactive reformation of UM/UIM rejections pursuant to *Jordan v. Allstate Ins. Co.*, 2010-NMSC-051, 149 N.M. 162, 245 P.3d 1214 does not apply to liability insurance policies issued before May 20, 2004 when the opinion in *Montano v. Allstate Indemnity Co.*, 2004-NMSC-020, 135 N.M. 681, 92 P.3d 1255 was issued. *Whelan v. State Farm Mut. Auto. Ins. Co.*, 2014-NMSC-021.

Where, in 2002, the decedent was in a parked truck when it was hit by a moving vehicle; the collision resulted in severe injuries and ultimately in the decedent's death; at the time of the accident, the decedent was insured under the terms of a $50,000 liability policy issued by defendant that facially provided no UM/UIM coverage; the decedent received $25,000 from the at-fault driver's insurance carrier; and plaintiff filed suit for reformation of the decedent's liability policy to provide UM/UIM coverage equal to the liability limits of $50,000 pursuant to *Jordan v. Allstate Ins. Co.*, 2010-NMSC-051, 149 N.M. 162, 245 P.3d 1214, the decedent's liability insurance policy was not subject to retroactive reformation of its facial lack of UM/UIM coverage because judicial reformation under *Jordan* does not extend to insurance contracts formed before May 20, 2004, when the opinion in *Montano v. Allstate Indemnity Co.*, 2004-NMSC-020, 135 N.M. 681, 92 P.3d 1255 was issued. *Whelan v. State Farm Mut. Auto. Ins. Co.*, 2014-NMSC-021.

**Coverage options and premiums.** — A valid waiver or rejection of UM/UIM coverage does not require that the insured be provided a written list of coverage options and corresponding premium charges on the written rejection form that is delivered with the insurance policy to the insured. *Curry v. Great Nw. Ins. Co.*, 2014-NMCA-031, cert. denied, 2014-NMCERT-003.

Where plaintiffs' vehicle were covered by a standard insurance policy; plaintiffs were involved in a motor vehicle accident and filed an uninsured motorist claim with defendant; defendant refused to pay the claim based on a written rejection of UM/UIM coverage that plaintiffs signed when they purchased their policy; and plaintiffs claimed that because the UM/UIM coverage rejection form relied on by defendant did not contain a list of premium charges corresponding to the available UM/UIM coverage option, the UM/UIM coverage rejection form was invalid, the rejection form was valid because, although insurers must provide UM/UIM coverage and premium information in a way that allows the insured to make an informed decision about the coverage purchased or rejected in a knowing and intelligent manner, New Mexico law does not

require an insurer to provide available UM/UIM coverage options and corresponding premium information on the written rejection form delivered with the insurance policy to the insured. *Curry v. Great Nw. Ins. Co.*, 2014-NMCA-031, cert. denied, 2014-NMCERT-003.

**UM/UIM coverage is illusory at minimally insured levels.** — The underinsured motorist (UIM) coverage on a policy that provides minimum uninsured/underinsured motorist (UM/UIM) limits of $25,000 per person/$50,000 per accident is misleading for an insured who sustains more than $25,000 in damages caused by a minimally insured tortfeasor, because a consequence of the offset rule is that if injured persons purchased only the statutory minimum policy, the person's policy will not cover losses for damages in excess of $25,000. New Mexico law, however, allows an insurer to sell minimum limits UM/UIM coverage to a policyholder and only provide coverage for uninsured motorist coverage, and insurers may charge a premium for such coverage as long as they make a proper disclosure to the policyholder. *Crutcher v. Liberty Mut. Ins. Co.*, 2022-NMSC-001.

**Rejection of coverage.** — The affirmative selection of a level of UM/UIM coverage in an amount less than full liability coverage does not constitute a "rejection" of coverage such that an insurer must obtain a written waiver of coverage and include it in the policy. *Progressive Nw. Ins. Co. v. Weed Warrior Servs.*, 588 F.Supp.2d 1281 (D.N.M. 2008)

**Contractual exclusions that conflict with mandatory requirements are void.** — Where the underinsured motorist's policy provided that the amount of underinsured motorist coverage the insurer would pay would be reduced by the amount of any other bodily injury coverage available to any party held liable for the accident and the tortfeasor's liability coverage was $25,000, the provision was void to the extent it limited the insured's recovery of underinsured motorist benefits to an amount less than the insured's underinsured motorist coverage of $30,000, minus an offset in the amount of liability proceeds actually received by the insured from the tortfeasor. *Farmers Ins. Co. of Ariz. v. Sandoval*, 2011-NMCA-051, 149 N.M. 656, 253 P.3d 944.

**Minimum requirements for rejection of coverage.** — At a minimum, for a rejection of UM/UIM coverage to be valid, insureds must be clearly informed as to the amount of coverage they are entitled to purchase, the amount of coverage they have in fact purchased, and the fact that they have rejected some amount of coverage. *Farmers Ins. Co. of Ariz. v. Chen*, 2010-NMCA-031, 148 N.M. 151, 231 P.3d 607, cert. quashed, 2010-NMCERT-011, 150 N.M. 490, 262 P.3d 1143.

**Rejection of uninsured/underinsured coverage must be in writing.** — An insurer must obtain a written rejection of uninsured/underinsured motorist coverage from the insured in order to exclude the coverage from an automobile liability insurance policy. The written rejection of coverage need not be signed by the insured or attached to the insurance policy to be effective. However, some evidence of the insured's rejection of uninsured/underinsured motorist coverage must be made part of the policy by endorsement, attachment, or some other means that calls attention to the fact that the

coverage has been rejected. *Marckstadt v. Lockheed Martin Corp.*, 2010-NMSC-001, 147 N.M. 678, 228 P.3d 462.

**Intent is irrelevant.** — The question of whether uninsured/underinsured motorist coverage is included in an automobile liability insurance policy is not a question of the parties' intent, but of whether the rejection of coverage conformed to the requirements of Section 66-5-301 NMSA 1978 and 13.12.3.9 NMAC. *Marckstadt v. Lockheed Martin Corp.*, 2010-NMSC-001, 147 N.M. 678, 228 P.3d 462.

**Insufficient evidence of written rejection of coverage.** — Where the employer obtained an automobile liability insurance policy that provided coverage for the employer's employees; the employer intended to reject uninsured/underinsured coverage; the policy included an endorsement entitled "Limits of Liability – Uninsured Motorists" that contained a list of states and next to New Mexico an "X" indicating rejection of uninsured/underinsured coverage; the endorsement was not signed by the employer; and there was no evidence of any discussions or correspondence in which the insured directed the insurer to exclude uninsured/underinsured coverage or to indicate who drafted or filled in the endorsement, the evidence was insufficient to show that the insured had rejected uninsured/underinsured motorist coverage in writing. *Marckstadt v. Lockheed Martin Corp.*, 2010-NMSC-001, 147 N.M. 678, 228 P.3d 462.

**Purchase of uninsured motorist coverage in amounts less than policy liability limits.** — Where plaintiff issued an automobile liability insurance policy to defendant and defendant's spouse with liability limits of $100,000 and UM/UIM limits of $30,000; during the application process, defendant's spouse signed UM/UIM election agreements which defined UM/UIM coverage and stated that the opportunity to purchase UM/UIM coverage in an amount up to the automobile limits had been previously provided; the agreements allowed the insured to reject UM/UIM entirely or select an amount of coverage less than the liability limits of the policy; the agreements signed by defendant's spouse indicated a selection of UM/UIM limits of $30,000; the agreements were not attached to the policies that plaintiff issued to defendant; the declaration pages of policies referred to an endorsement which was attached to the policies which stated that the insured had selected UM/UIM coverage that was lower than the bodily injury limits of liability of the policy; and the agreements, declaration pages and endorsements did not list the amount of UM/UIM coverage the insureds were permitted to purchase or the amount they had rejected by choosing to purchase lesser coverage, the documents did not meet the written rejection requirement or the attached notification requirement for a valid rejection of UM/UIM coverage at the liability limits of defendant's policies. *Farmers Ins. Co. of Ariz. v. Chen*, 2010-NMCA-031, 148 N.M. 151, 231 P.3d 607, cert. quashed, 2010-NMCERT-011, 150 N.M. 490, 262 P.3d 1143.

**Failure to attach rejection of coverage to the policy.** — Where the insured signed a rejection of uninsured/underinsured motorist coverage as part of the insured's initial application for insurance; a copy of the application was given to the insured at the time of application; and the application and the rejection were not physically attached to the insurance policy that the insured received from the insurer, the rejection was ineffective

under administrative regulation 13.12.3.9 NMAC which requires the rejection of coverage to be made a part of the policy delivered to the insured. *Arias v. Phoenix Indemnity Ins. Co.*, 2009-NMCA-100, 147 N.M. 14, 216 P.3d 264, cert. denied, 2009-NMCERT-008, 147 N.M. 395, 223 P.3d 940.

**Delay in providing policy incorporating rejection of uninsured/underinsured motorist coverage invalidated rejection of coverage.** — Where personal representatives of the estate of decedent sued defendant insurance company for denying uninsured and underinsured motorist (UM/UIM) coverage for the accidental death of decedent, and where the district court granted defendant's motion for summary judgment, concluding that decedent's father, the insurance holder, had validly rejected UM/UIM coverage, the district court erred in granting summary judgment because decedent's father's rejection of UM/UIM coverage was invalid because defendant deprived him of a fair opportunity to reconsider his decision to reject coverage by failing to provide him with a policy incorporating the rejection until over seven months after he had signed the rejection form. An unreasonable delay between rejection and incorporation deprives the insured of the opportunity to reconsider any rejection of UM/UIM coverage. *Sanchez v. Essentia Ins. Co*., 2020-NMCA-009, cert. denied.

**Stacking of coverage.** — Absent the execution of a sufficient rejection of each and every possible combination of stacking, stacking is a default entitlement with regard to all individual vehicles covered under a policy. *Arias v. Phoenix Indem. Ins. Co.*, 2014-NMCA-027, cert. denied, 2014-NMCERT-001.

When courts confer uninsured/underinsured motorist coverage where a policy is silent on the matter, each vehicle covered also requires coverage, and those coverages are stackable. *Arias v. Phoenix Indem. Ins. Co.*, 2014-NMCA-027, cert. denied, 2014-NMCERT-001.

Where plaintiff’s rejection of uninsured/underinsured motorist coverage was legally deficient and the court reformed plaintiff’s insurance policy to include uninsured/underinsured motorist coverage to the maximum limit of liability; and the policy covered two vehicles, plaintiff was entitled to have the coverage stacked as to each vehicle. *Arias v. Phoenix Indem. Ins. Co.*, 2014-NMCA-027, cert. denied, 2014-NMCERT-001.

**Plaintiff entitled to stack coverages where policy was ambiguous as to whether multiple premiums were paid.** — Where plaintiff originally insured a single vehicle with Allstate in March 2016 and added a second vehicle to her policy later that year, and where plaintiff's agent had plaintiff execute a UM/UIM selection/rejection form where plaintiff selected "non-stacked" UM/UIM coverage, and then, in December 2016, plaintiff was hit by a car while walking on a crosswalk, for which plaintiff submitted a claim for UM/UIM benefits to Allstate and sought stacked coverage, and where Allstate declined plaintiff's request to stack, and where the district court granted Allstate's motion for summary judgment, concluding that Allstate complied with all requirements for a valid rejection of uninsured motorist coverage, the district court erred in granting Allstate's

motion for summary judgment, because New Mexico courts have consistently held that where an insurance company charges a separate UM/UIM premium for each vehicle under a multi-vehicle policy, it is only fair that the insured be permitted to stack the coverages for which they have paid, and in this case, the policy was ambiguous as to whether multiple premiums were paid because the UM/UIM coverages were listed on the declarations page on a vehicle-by-vehicle basis, indicating there was coverage attached to each vehicle, and, more importantly, the declarations page listed a premium coverage for the UM/UIM coverage on each vehicle, which could lead a reasonable insured to think they are paying multiple premiums. *Garcia v. Allstate*, 2024-NMCA-010, cert. granted.

**Applicability of the Mandatory Financial Responsibility Act.** — The definition in Section 66-5-205.3 NMSA 1978 of the Mandatory Financial Responsibility Act of the insurance contract between the insured and the insurer to include the insured's application for insurance has no bearing on whether there has been a valid rejection of uninsured/underinsured motorist coverage under the Uninsured Motorist Act. *Arias v. Phoenix Indemnity Ins. Co.*, 2009-NMCA-100, 147 N.M. 14, 216 P.3d 264, cert. denied, 2009-NMCERT-008, 147 N.M. 395, 223 P.3d 940.

**Option to reject coverage.** — A motorist has the option of rejecting uninsured motorist coverage, or protecting his estate against a financially irresponsible motorist, and the coverage conditions of another driver's policy cannot be overlooked so as to provide protection that the motorist himself could have obtained on the ground that it is public policy to afford protection to the innocent public. *Lee v. General Accident Ins. Co.*, 1987-NMSC-047, 106 N.M. 22, 738 P.2d 516.

**Formality of rejection.** — An insured may reject uninsured motorist coverage, but the rejection must satisfy the regulations promulgated by the superintendent of insurance. The rejection must be made a part of the policy by endorsement on the declarations sheet, by attachment of the written rejection to the policy, or by some other means that makes the rejection a part of the policy so as to clearly and unambiguously call to the attention of the insured the fact that such coverage has been waived. *Romero v. Dairyland Ins. Co.*, 1990-NMSC-111, 111 N.M. 154, 803 P.2d 243; *Kaiser v. DeCarrera*, 1996-NMSC-050, 122 N.M. 221, 923 P.2d 588.

**Invalid rejection.** — Insured's rejection of uninsured motorist coverage was invalid and ineffective as a matter of law, where she was never given a copy of the application containing the rejection, and the declarations sheet that she later received made no mention of the rejection of uninsured motorist coverage. *Romero v. Dairyland Ins. Co.*, 1990-NMSC-111, 111 N.M. 154, 803 P.2d 243; *Kaiser v. DeCarrera*, 1996-NMSC-050, 122 N.M. 221, 923 P.2d 588.

**Rejection to be part of policy.** — Even though the insurer mailed a revised declarations page which indicated that the insured had rejected uninsured and underinsured motorist coverage, and the envelope was returned as undeliverable, the

insured's coverage was not affected since the rejection was not made a part of the policy. *Kaiser v. DeCarrera*, 1996-NMSC-050, 122 N.M. 221, 923 P.2d 588.

**Duty of insurance agent.** — A purchaser of insurance must only be fully informed of the fact of rejection, rather than the significance of the rejection; an insurance agent has no duty to inform prospective purchasers of the ramifications of their decision. *Vigil v. Rio Grande Ins. of Santa Fe*, 1997-NMCA-124, 124 N.M. 324, 950 P.2d 297.

**Rejection by insured's agent.** — The named insured was bound by his wife's rejection of uninsured motorist coverage at the time she purchased the insurance policy as his agent. *Vigil v. Rio Grande Ins. of Santa Fe*, 1997-NMCA-124, 124 N.M. 324, 950 P.2d 297.

**Effect of insurer's failure to file policy with superintendent of insurance.** — An insured's rejection of uninsured motorist coverage was not a nullity because the application form with its rejection language and the declarations page were never submitted for approval under Section 59A-18-12 NMSA 1978. *Vigil v. Rio Grande Ins. of Santa Fe*, 1997-NMCA-124, 124 N.M. 324, 950 P.2d 297.

**Addition of vehicles to policy.** — The addition of vehicles to a policy or changes affecting the payment of premiums did not create a new policy requiring a new rejection of uninsured motorist coverage. *Vigil v. Rio Grande Ins. of Santa Fe*, 1997-NMCA-124, 124 N.M. 324, 950 P.2d 297.

The uninsured motorist statutes and regulations promulgated under the statutes do not expressly require an insurer to obtain a specific written rejection that acknowledges a limitation on stacking. *Montano v. Allstate Indem. Co.*, 2003-NMCA-066, 133 N.M. 696, 68 P.3d 936, *rev'd*, 2004-NMSC-020, 135 N.M. 681, 92 P.3d 1255.

**Invalid rejection of UM/UIM coverage.** — Where the declaration page of an automobile insurance policy suggested that the insured did not have UM/UIM coverage; one endorsement to the policy said that UM/UIM coverage was deleted; and another endorsement indicated that UM/UIM coverage was sometimes available, the endorsement which deleted UM/UIM coverage was not a valid rejection of UM/UIM coverage because the policy did not unambiguously convey to the insured the extent of the UM/UIM coverage. *Williams v. Farmers Ins. Co.*, 2009-NMCA-069, 146 N.M. 515, 212 P.3d 403, cert. denied, 2009-NMCERT-006, 146 N.M. 733, 215 P.3d 42.

**Class II insureds covered where there was an invalid rejection of UM/UIM coverage.** — Where the plaintiffs, who were the driver and a passenger of a vehicle owned by the daughter of the insured, were injured in an automobile accident with a vehicle driven by an underinsured driver; the named insured of the vehicle that was driven by the plaintiffs signed a waiver of UM/UIM coverage; the waiver was not attached to the policy; and an endorsement to the policy which deleted UM/UIM coverage from a policy was not a valid rejection of UM/UIM coverage, the plaintiffs were covered, as class II insureds, by the UM/UIM coverage provided by the policy. *Williams*

*v. Farmers Ins. Co.*, 2009-NMCA-069, 146 N.M. 515, 212 P.3d 403, cert. denied, 2009-NMCERT-006, 146 N.M. 733, 215 P.3d 42.

**Rejection of coverage.** — Where the insured believed that it had rejected uninsured/underinsured motorist coverage, the requirements for rejection of uninsured motorist and underinsured motorist coverage are met when a business automobile insurance policy contains a written, but unsigned, endorsement indicating such rejection. *Marckstadt v. Lockheed Martin Corporation*, 2008-NMCA-138, 145 N.M. 90, 194 P.3d 121, *rev'd*, 2010-NMSC-001, 147 N.M. 678, 228 P.3d 462.

**Purchase of uninsured motorist coverage in amounts less than policy liability limits.** — Where the insured's automobile liability policy contained liability limits of $100,000 and UM/UIM limits of $50,000; the insured received a copy of the policy which contained a standard declarations page listing the amount of liability and UM/UIM coverage; the policy did not contain a notification that UM/UIM coverage could be increased to an amount equal to the liability limits of the policy and it did not contain any indication that the insured had rejected any amount of UM/UIM coverage that the insured had a statutory right to purchase, the insured's selection of an amount of UM/UIM coverage that was less than the liability limits of the insured's automobile policy constituted a rejection of UM/UIM coverage in an amount equal to the difference between the UM/UIM coverage and the liability coverage of the policy, the insured did not validly reject the UM/UIM coverage, and the district court properly read into the policy UM/UIM coverage in an amount equal to the liability limits of the policy. *Romero v. Progressive Nw. Ins. Co.*, 2010-NMCA-024, 148 N.M. 97, 230 P.3d 844, cert. granted, 2010-NMCERT-003, 148 N.M. 560, 240 P.3d 15, *aff'd*, *Jordan v. Allstate Ins. Co.*, 2010-NMSC-051, 149 N.M. 162, 245 P.3d 1214.

## III. COVERAGE.

### A. GENERALLY.

**Scope of uninsured motorist coverage.** — New Mexico public policy generally requires that uninsured motorist coverage be territorially coextensive with liability coverage. *State Farm Mut. Auto. Ins. Co. v. Marquez*, 2001-NMCA-053, 130 N.M. 591, 28 P.3d 1132, cert. denied, 130 N.M. 558, 28 P.3d 1099.

**Scope of coverage.** — When someone purchases general uninsured motorist coverage, he is insured against bodily injury in at least five situations: (1) as a pedestrian; (2) as a passenger in someone else's insured car; (3) as a passenger in an uninsured car; (4) while in his own insured car; and (5) for injuries suffered by passengers riding in his own insured car. *Lopez v. Foundation Reserve Ins. Co.*, 1982-NMSC-034, 98 N.M. 166, 646 P.2d 1230.

**Coverage of an insured family member.** — An insured family member is entitled to recover for an accident involving the insured vehicle, as opposed to a vehicle owned by a third party, even though the insurance policy attempts to exclude coverage for any

vehicle owned by the named insured; and the insured, injured family member is entitled to recover even though the negligent driver was also an insured family member. Moreover, the named insured may stack benefits available to him/her under the uninsured/underinsured motorist coverage for other vehicles covered by the same policy. *Padilla v. Dairyland Ins. Co.*, 1990-NMSC-025, 109 N.M. 555, 787 P.2d 835.

**Written disclosure of coverage required.** — A named-driver exclusion was not a basis to reject uninsured motorist coverage for a class-one uninsured motorist coverage for class-one insureds was not expressly excluded. *Phoenix Indem. Ins. Co. v. Pulis*, 2000-NMSC-023, 129 N.M. 395, 9 P.3d 639.

**Employee of school bus company.** — A school bus driver was not an "insured" under the liability policy of her employer school bus company and was not covered under the uninsured motorist or underinsured motorist coverage of the policy. *Archunde v. International Surplus Lines Ins. Co.*, 1995-NMCA-110, 120 N.M. 724, 905 P.2d 1128, cert. denied, 120 N.M. 533, 903 P.2d 844.

**Coverage of employees.** — A self-insured school district was not required to provide uninsured motorist or underinsured motorist coverage for employees of a school bus company under its contract with the company or the provisions of this section. *Archunde v. International Surplus Lines Ins. Co.*, 1995-NMCA-110, 120 N.M. 724, 905 P.2d 1128, cert. denied, 120 N.M. 533, 903 P.2d 844.

**Passenger, riding in noncovered vehicle not operated by named insured, not "insured".** — Where the passenger was neither the named insured nor a relative thereof, and passenger's injuries were not incurred in a vehicle directly covered by the policy (or covered as a substitute vehicle under the policy), and the named insured (or a relative thereof) was not operating the vehicle, the passenger was not an "insured" under the policy. *Gamboa ex rel. Gamboa v. Allstate Ins. Co.*, 1986-NMSC-078, 104 N.M. 756, 726 P.2d 1386.

**Coverage not limited to actual contact with uninsured motorist.** — Insurance company could not contractually restrict its uninsured or unknown motorist coverage to situations in which there is physical contact between the insured and a "hit-and-run" vehicle without violating the remedial legislative policy of Section 64-5-105, 1953 Comp. (similar to this section). Therefore, plaintiff who, in order to avoid an imminent head-on collision, swerved her vehicle to the right and collided with a stone wall off the right shoulder of the road, was not precluded from recovery by such provision in her policy. *Montoya v. Dairyland Ins. Co.*, 394 F. Supp. 1337 (D.N.M. 1975).

**Coverage of several vehicles insured under single policy.** — This section requires only that each of several vehicles insured under a single policy be covered by one minimum coverage with no need for separate full coverage for each. Lopez v. Foundation Reserve Ins. Co., 1982-NMSC-034, 98 N.M. 166, 646 P.2d 1230.

**Coverage of additional vehicles.** — New Mexico requires minimum property damage coverage under its financial responsibility law. This requirement may justify some additional premium charge for each additional vehicle, depending on the added risk incurred. *Lopez v. Foundation Reserve Ins. Co.*, 1982-NMSC-034, 98 N.M. 166, 646 P.2d 1230.

The additional risk accruing by covering passengers in additional insured vehicles may justify another premium for each additional vehicle. *Lopez v. Foundation Reserve Ins. Co.*, 1982-NMSC-034, 98 N.M. 166, 646 P.2d 1230.

**"Property".** — The word "property," as that term is used in this section and in Section 66-5-215 NMSA 1978, included coverage of a house damaged when an uninsured motorist negligently drove his vehicle so as to cause damage to the house. *Richards v. Mountain States Mut. Cas. Co.*, 1986-NMSC-021, 104 N.M. 47, 716 P.2d 238.

**"Occupant".** — Plaintiff was "occupying" the insured car at the time of the accident for purposes of uninsured motorist coverage where he was driving the car when it had a flat tire, parked the car on the side of the highway, went with a passerby in a truck to get a spare, returned to the scene in the truck which parked within a close proximity of the car, and was struck by an uninsured motorist while reaching into the back of the truck to get the spare. *Cuevas v. State Farm Mut. Auto. Ins. Co.*, 2001-NMCA-038, 130 N.M. 539, 28 P.3d 527.

Driver, who was injured while assisting a friend in replacing a tire on the friend's automobile, was not an "occupant" of the driver's automobile within the meaning of the driver's policy at the time of the accident and, therefore, was not covered under the uninsured motorist provision of the policy. *Allstate Ins. Co. v. Graham*, 1988-NMSC-018, 106 N.M. 779, 750 P.2d 1105.

**"Occupying" construed.** — Whether a plaintiff was "occupying" a vehicle requires New Mexico courts to consider a variety of factors, such as the connection between the plaintiff and the covered vehicle, the intention of the plaintiff, the proximity of the plaintiff to the covered vehicle at the time of the accident, and whether the claimant was engaged in a transaction essential to his use of the vehicle. *Almager v. Doe*, 505 F. Supp.3d 1166 (D. N.M. 2020).

**Employee was "occupying" a covered vehicle while attempting to prevent car theft.** — Where an employee of an insured who was injured after he confronted an individual who was attempting to steal his insured company vehicle, the employee was "occupying" the insured car at the time of the injury for purposes of uninsured motorist coverage where the evidence established that the employee was responsible for the vehicle and used it to conduct duties of employment, that he was employed by the entity for whom the insurance policy was written, that he relied on the vehicle for transportation to and from job sites, and that his intent was clearly to stop the theft of the vehicle, a transaction essential to the use of the vehicle. *Almager v. Doe*, 505 F. Supp.3d 1166 (D. N.M. 2020).

**Ownership, maintenance, or use of uninsured vehicle.** — Where an employee of an insured, who was injured after he confronted an individual who was attempting to steal his insured company vehicle, brought an action against the automobile insurer seeking uninsured motorist coverage, and where defendant argued in a motion to dismiss that the "uninsured" vehicle was used by the car thief only as a getaway vehicle and therefore there was not a sufficient causal nexus between the injury suffered by plaintiff and the use of the uninsured vehicle, the court found that the employee's injuries arose out of ownership, maintenance, or use of the assailant's vehicle because the getaway vehicle was a vital feature to plaintiff's injury, and the "use" of the vehicle was inseparable from plaintiff's injury. *Almager v. Doe*, 505 F. Supp.3d 1166 (D. N.M. 2020).

**Recovery by guest under both liability and underinsured provisions denied.** — A guest passenger was not allowed to recover for public policy reasons under both the liability and underinsured motorist provisions of a negligent host driver's insurance policy, even though an offset provision in the policy would prevent a double recovery. *Mountain States Mut. Cas. Co. v. Martinez*, 1993-NMSC-003, 115 N.M. 141, 848 P.2d 527.

**Whether uninsured motorist coverage extends to the victim of an intentional tort.** — Whether uninsured motorist coverage extends to the victim of an intentional tort requires consideration of whether a sufficient causal connection exists between the use and the harm, which requires that the vehicle be an active accessory in causing the injury, whether an act of independent significance has broken the causal link, and whether the use to which the vehicle was put was a normal use of that vehicle. Only after answering each question favorably for the insured, might a court determine that the causal connection required by statutory and policy language has been established and that coverage exists. *Haygood v. USAA*, 2019-NMCA-074.

**Intentional conduct did not arise out of the normal use of the vehicle.** — Where plaintiff brought claims for breach of contract, breach of the implied covenant of good faith and fair dealing, insurance bad faith, unfair insurance practices, and unfair trade practices against defendant insurer after he was denied uninsured motorist coverage for injuries he sustained during an assault occurring in and around an uninsured motor vehicle parked outside a residence, the district court did not err in granting defendant's motion for summary judgment and determining that plaintiff was not entitled to uninsured motorist coverage, because plaintiff's injuries had not arisen out of the normal use of the car. Nothing in the stipulated facts suggests that the tortfeasor was acting as a motorist or that the confinement of plaintiff depended on or involved any transportation, specialized use, or other operation of the vehicle. *Haygood v. USAA*, 2019-NMCA-074.

**Bad faith claim not dependent on coverage.** — Where plaintiff brought claims for breach of contract, breach of the implied covenant of good faith and fair dealing, insurance bad faith, unfair insurance practices, and unfair trade practices against defendant insurer after he was denied uninsured motorist coverage for injuries he sustained during an assault occurring in and around an uninsured motor vehicle parked

outside a residence, the district court erred in granting defendant's motion for summary judgment on plaintiff's bad faith claim, because the district court misinterpreted New Mexico law when it foreclosed entirely plaintiff's bad faith claim in the absence of coverage. Bad faith may be based on conduct separate from refusal to pay. *Haygood v. USAA*, 2019-NMCA-074.

**Being stabbed by passenger deemed "accident".** — Injuries to an insured caused when he was stabbed by a passenger in an uninsured vehicle after a collision arose out of an "accident," as that term is used in uninsured motorist endorsements. *Britt v. Phoenix Indem. Ins. Co.*, 1995-NMSC-075, 120 N.M. 813, 907 P.2d 994.

**Drivers of uninsured vehicles are not vicariously liable for intentional torts of passengers** and a passenger's mere presence in the vehicle is, without more, an insufficient basis from which to conclude that the victim (the driver of the insured vehicle) is legally entitled to recover from the driver of the uninsured vehicle. *Britt v. Phoenix Indem. Ins. Co.*, 1995-NMSC-075, 120 N.M. 813, 907 P.2d 994.

**No coverage where vehicle was not used to facilitate intentional tort.** — Where defendants drove to a neighborhood in an uninsured vehicle and carried out a series of car burglaries, and where, during one of the burglaries, defendants stabbed and killed decedent inside the uninsured vehicle, and where plaintiff, as personal representative of the estate of decedent, brought claims for uninsured motorist and underinsured motorist coverage under two policies issued to decedent, and where the district court granted a motion for summary judgment in favor of the insurance companies, the district court did not err in granting the motion for summary judgment, because to establish coverage under the policies, the injuries must have arisen from the use of an uninsured vehicle, and the stipulated facts in the present case did not demonstrate that the defendants used the vehicle to facilitate the harm. *McKinley v. Interinsurance Exch. of the Auto. Club*, 2022-NMCA-055, cert. granted.

**Plaintiff failed to show a sufficient causal nexus between the use of the uninsured vehicle and the resulting harm.** — Where plaintiff was transported in an uninsured vehicle to a place where she was sexually assaulted, and where plaintiff subsequently filed a claim for uninsured motorist coverage for the incident under a policy that defendant insurance company had issued to plaintiff’s mother and under which plaintiff was an insured, the trial court did not err in ruling that there was not a sufficient causal nexus between the use of the uninsured vehicle and the sexual assault of plaintiff, because the uninsured vehicle was not an integral element of the sexual assault; an uninsured vehicle does not constitute an active accessory to the commission of an intentional tort solely because use of the vehicle was necessary to transport the assailant and/or the victim to or from the scene of the intentional tort. *Crespin v. Safeco Ins. Co. of Am.*, 2018-NMCA-068.

**Injuries which resulted from a drive-by shooting** resulted from an "accident" and were covered by either uninsured motorists or medical payments provisions of the

insurance policies. *State Farm Mut. Auto. Ins. Co. v. Blystra*, 86 F.3d 1007 (10th Cir. 1996).

**Loss of consortium.** — A wife's claim for loss of consortium, under this particular policy, was subsumed by the compensation paid for her husband's injury; it is not considered a separate additional sum. *Gonzales v. Allstate Ins. Co.*, 1996-NMSC-041, 122 N.M. 137, 921 P.2d 944.

Loss of consortium is an emotional injury, not a "bodily injury" as referenced in Subsection B; emotional injuries are not covered by an insurance contract without specific policy language to the contrary. *Wiard v. State Farm Mut. Auto. Ins. Co.*, 2002-NMCA-073, 132 N.M. 470, 50 P.3d 565, cert. denied, 132 N.M. 288, 47 P.3d 447.

**Offset of awards.** — Grant of summary judgment in favor of the insurer permitting offset from the insureds' uninsured/underinsured (UM/UIM) motorist coverage arbitration awards the amount it paid to the insureds under the medical payments portion of their policies was proper where the insureds were fully compensated for their damages, and there was no danger that enforcing the offset would reduce UM/UIM coverage below the statutory minimum or result in less than full compensation consonant with policy limits. *Fickbohm v. St. Paul Ins. Co.*, 2003-NMCA-040, 133 N.M. 414, 63 P.3d 517.

## B. STACKING.

**"Coverage",** in Subsection B, includes one or more policies depending on the number purchased for the insured's benefit; thus, an insured may stack two underinsured motorist policies for the purpose of determining a tortfeasor's underinsured status. *Schmick v. State Farm Mut. Auto. Ins. Co.*, 1985-NMSC-073, 103 N.M. 216, 704 P.2d 1092.

**Stacking determined by law of place where the liability insurance policy originated.** — Where plaintiff was involved in an automobile accident in New Mexico; the at-fault driver was uninsured; plaintiff was the named insured on an insurance policy that covered the car plaintiff was driving and on a separate insurance policy that covered another vehicle; plaintiff paid separate premiums on the policies; plaintiff owned homes in California and New Mexico, but resided in New Mexico; both policies were issued by defendant while plaintiff resided in California and listed plaintiff’s address in California; both policies provided uninsured motorist coverage; the policies contained an anti-stacking provision; California law prohibited stacking, and New Mexico law favored stacking, California law governed issues pertaining to the insurance policies, including the anti-stacking provisions, and the district court did not err in dismissing plaintiff’s claim for additional coverage by stacking. *Wilkeson v. State Farm Mut. Auto. Ins.*, 2014-NMCA-077, cert. denied, 2014-NMCERT-006.

**Stacking.** — Whether "stacking" is to be permitted depends on the evidence presented in each case. The insured has the initial burden of proving that he paid multiple premiums for uninsured motorist coverage. Once he makes that showing, the burden

shifts to the insurance company to prove that it did not charge multiple premiums for the same coverage. *Lopez v. Foundation Reserve Ins. Co.*, 1982-NMSC-034, 98 N.M. 166, 646 P.2d 1230.

An insured is entitled to stack underinsured motorist policies for which separate premiums have been paid. *Konnick v. Farmers Ins. Co.*, 1985-NMSC-070, 103 N.M. 112, 703 P.2d 889.

An injured insured may stack his "class one" coverage with coverage under which he is a "class two" insured, to determine his underinsured status. *Morro v. Farmers Ins. Group*, 1988-NMSC-006, 106 N.M. 669, 748 P.2d 512.

An insured is entitled to stack the uninsured/underinsured motorist coverage applying to two cars for which he had purchased insurance under a single policy, and for which he has paid a separate premium for each car covered, despite a clear and unambiguous liability limitation clause in the policy prohibiting stacking of those coverages. *Jimenez v. Foundation Reserve Ins. Co.*, 1988-NMSC-052, 107 N.M. 322, 757 P.2d 792.

When an automobile insurance policy states that premiums for uninsured motorist coverage with respect to additional vehicles under the policy are included in another premium, a reasonable insured might understand that more than one premium is charged, more than one coverage is purchased, and that stacking would be permitted. Since an insurer conceptualizes and drafts the insurance contract, the insurer has an obligation to express clearly its intent not to allow stacking, to its agents who sell the policy and, more importantly, to the insureds to whom it issues the agreements it prepares. *Rodriguez v. Windsor Ins. Co.*, 1994-NMSC-075, 118 N.M. 127, 879 P.2d 759.

Insurance companies must obtain written rejections of stacking in order to limit their liability. *Montano v. Allstate Indem. Co.*, 2004-NMSC-020, 135 N.M. 681, 92 P.3d 1255.

Where a policy lacks a plain and affirmative declaration that the amount charged represents a single premium for a single amount of coverage, in the absence of such a declaration, insured is entitled to stack all coverages. *Montano v. Allstate Indem. Co.*, 2004-NMSC-020, 135 N.M. 681, 92 P.3d 1255.

## C. AMOUNT.

**Application of offsets between primary and secondary insurers.** — Neither the primary UIM insurer nor the secondary UIM insurers are directly awarded statutory offsets because the insured's recovery of UIM benefits is limited to the lesser of the insured's total damages or the insured's total stacked UIM coverage, minus the tortfeasor's liability coverage, so that the offset for the tortfeasor's liability coverage is deducted before any UIM insurer is required to pay UIM benefits. After the tortfeasor's liability coverage has been deducted, the primary insurer is required to exhaust its UIM policy limits before the secondary insurers are required to pay UIM benefits in an

amounts proportionate to their respective policy limits. *State Farm Mut. Auto. Ins. Co. v. Safeco Ins. Co.*, 2013-NMSC-006, 298 P.3d 452, *overruling State Farm Mut. Auto. Ins. Co. v. Jones*, 2006-NMCA-060, 139 N.M. 558, 135 P.3d 1277.

Where, in a hypothetical case, A was a passenger in a vehicle driven by B, which was struck by a vehicle negligently driven by C; A sustained $500,000 in damages; C had liability coverage of $100,000; B had primary UIM coverage of $100,000; and A had secondary UIM coverage under three policies of $100,000, $50,000, and $25,000, UIM benefits of $175,000 were available to A after C's liability coverage of $100,000 was deducted from the total stackable UIM coverage of $275,000 available to A, the primary insurer was required to pay $100,000 in UIM benefits, and the secondary insurers were each required to pay a prorated portion of $75,000, or $42,857.14, $21,428.57, and $10,714.29 respectively. *State Farm Mut. Auto. Ins. Co. v. Safeco Ins. Co.*, 2013-NMSC-006, 298 P.3d 452, *overruling State Farm Mut. Auto. Ins. Co. v. Jones*, 2006-NMCA-060, 139 N.M. 558, 135 P.3d 1277.

**Primary insurer, who is required to pay first, is entitled to statutory liability offset for liability payments received,** where a passenger is injured by a third-party tortfeasor who is entirely at fault and the damages exceed the amount of available underinsured motorist coverage from both the primary Class II insurer and the secondary Class I insurer. *State Farm Mut. Auto. Ins. Co. v. Jones*, 2006-NMCA-060, 139 N.M. 558, 135 P.3d 1277, cert. denied, 2006-NMCERT-005, 139 N.M. 567, 136 P.3d 568.

**In multiple-claimant situations,** insured motorists who are covered under an uninsured/underinsured motorist policy and who suffer from injuries resulting from an automobile accident are entitled to collect up to the limit of their underinsurance policy to the extent that their damages exceed the amounts that the tortfeasor's insurer has previously paid to them. *State Farm Mut. Auto. Ins. Co. v. Valencia*, 1995-NMCA-096, 120 N.M. 662, 905 P.2d 202, cert. denied, 120 N.M. 533, 903 P.2d 844.

**Underinsured motorist property damage coverage.** — In the absence of a valid rejection of underinsured motorist coverage for property damage, the policy must be read to include underinsured motorist coverage equal to the amount of the liability limits in the automobile insurance policy. *Gulbransen v. Progressive Halcyon Ins. Co.*, 2010-NMCA-082, 148 N.M. 585, 241 P.3d 183, cert. denied, 2010-NMCERT-008, 148 N.M. 942, 242 P.3d 1288.

Where the insurer issued an automobile insurance policy to the insured with property damage liability coverage in the amount of $50,000; the insurer did not offer the insured underinsured motorist property damage coverage; and the insured made no election to reject the coverage, the policy provided underinsured motorist property damage coverage in the amount equal to the policy's limits for property damage of $50,000. *Gulbransen v. Progressive Halcyon Ins. Co.*, 2010-NMCA-082, 148 N.M. 585, 241 P.3d 183, cert. denied, 2010-NMCERT-008, 148 N.M. 942, 242 P.3d 1288.

**Amount of coverage required.** — New Mexico law requires insurers to affirmatively offer UM/UIM coverage of not less than the minimum amount required by and up to the limits of liability coverage in the automobile insurance policy. *Romero v. Progressive Nw. Ins. Co.*, 2010-NMCA-024, 148 N.M. 97, 230 P.3d 844, cert. granted, 2010-NMCERT-003, 148 N.M. 560, 240 P.3d 15, *aff'd*, *Jordan v. Allstate Ins. Co.*, 2010-NMSC-051, 149 N.M. 162, 245 P.3d 1214.

**Deduction of reimbursement from another insured.** — The minimum cannot be invaded by the direct deduction from it of reimbursement to the insured from another insured. *Am. Mut. Ins. Co. v. Romero*, 428 F.2d 870 (10th Cir. 1970).

**Recovery from underinsured motorist carrier.** — Under Subsection B, an insured collects from his underinsured motorist carrier the difference between his uninsured motorist coverage and the tortfeasor's liability coverage or the difference between his damages and the tortfeasor's liability coverage, whichever is less. *Schmick v. State Farm Mut. Auto. Ins. Co.*, 1985-NMSC-073, 103 N.M. 216, 704 P.2d 1092; *Martinez v. Allstate Ins. Co.*, 1997-NMCA-100, 124 N.M. 36, 946 P.2d 240.

**Amount of offset when tortfeasor's policy excludes punitive damages.** — An insurer is not entitled to offset an injured insured's award of underinsured motorist benefits by the tortfeasor's liability limits when the insured receives an amount less than the policy limits due to a contractual exclusion for punitive damages. The insurer's offset is limited to the amount of money actually received by the insured from the tortfeasor. *Farmers Ins. Co. of Ariz. v. Sandoval*, 2011-NMCA-051, 149 N.M. 654, 253 P.3d 944.

Where the tortfeasor's liability policy provided liability coverage in the amount of $25,000 per person and explicitly excluded punitive damages from liability coverage; defendants' compensatory damages were less than $25,000 each; plaintiff insured the insured defendant's vehicle for $30,000 per person; and defendants each sought $30,000 in punitive damages, plaintiff was not entitled to offset the policy limits of defendant's underinsured motorist coverage of $30,000 by the policy limits of the tortfeasor's policy limits of $25,000 and pay defendant's only $5,000 each. *Farmers Ins. Co. of Ariz. v. Sandoval*, 2011-NMCA-051, 149 N.M. 654, 253 P.3d 944.

**Limitation on underinsured recovery.** — Regardless of the number of underinsured tortfeasors at fault, the legislature intended that the injured party's underinsurance recovery should be limited to the amount of underinsured motorist coverage purchased, less available liability proceeds. *Fasulo v. State Farm Mut. Auto. Ins. Co.*, 1989-NMSC-060, 108 N.M. 807, 780 P.2d 633.

**Denial of pursuit of uninsured motorist claim.** — Where a plaintiff was injured in an automobile accident and collected the maximum available from the tortfeasor's liability insurance policy, and also sought uninsured motorist benefits under her own policy because the accident was caused in part by an unknown truck driver who left the scene of the accident, the trial court erred in ruling that the plaintiff was entitled to pursue her

uninsured motorist claim relative to the phantom truck driver. *American States Ins. Co. v. Frost*, 1990-NMSC-065, 110 N.M. 188, 793 P.2d 1341.

**Multiple claimants to liability coverage.** — Where there are multiple claimants to the proceeds of a tortfeasor's liability coverage, in determining whether the tortfeasor is an underinsured motorist, the court must look to the liability proceeds actually available to the injured insureds, not merely the express policy limits of the tortfeasor's liability coverage. *Gonzales v. Millers Cas. Ins. Co.*, 923 F.2d 1417 (10th Cir. 1991).

**Offset of liability coverage.** — Since a guest passenger injured in a one-car accident was paid the maximum liability insurance of $50,000 under the driver's policy, he was not entitled to collect the $25,000 uninsured/underinsured coverage provided under his parents' policy since, under this section, the parents' insurer was entitled to an offset equal to the driver's liability coverage. *Samora v. State Farm Mut. Auto. Ins. Co.*, 1995-NMSC-022, 119 N.M. 467, 892 P.2d 600.

## D. PUNITIVE DAMAGES.

**Acts constituting rejection of maximum coverage.** — Section 66-5-301 NMSA 1978 requires an insurer to affirmatively offer UM/UIM coverage in an amount equal to the liability limits of the policy. The election by an insured to purchase UM/UIM coverage in an amount less than the policy liability limits constitutes a rejection of the maximum amount of UM/UIM coverage permitted under Section 66-5-301 NMSA 1978. *Progressive Nw. Ins. Co. v. Weed Warrior Servs.*, 2010-NMSC-050, 149 N.M. 157, 245 P.3d 1209.

**Requirements for a valid rejection of maximum coverage.** — To obtain a valid rejection of UM/UIM coverage equal to the liability limits of an automobile insurance policy, an insurer must inform the insured that the insured is entitled to purchase UM/UIM coverage in an amount equal to the policy's liability limits; provide the insured the premium charges for the maximum amount of UM/UIM coverage, the minimum amount of UM/UIM coverage under Section 66-5-301 NMSA 1978, and any other levels of UM/UIM coverage offered to the insured; obtain a written rejection of UM/UIM coverage equal to the limits of liability; and make the written rejection a part of the policy that is delivered to the insured. If the insurer does not obtain a valid rejection of UM/UIM coverage, the policy will be reformed to provide UM/UIM coverage equal to the liability limits. *Jordan v. Allstate Ins. Co.*, 2010-NMSC-051, 149 N.M. 162, 245 P.3d 1214.

**Invalid rejection of maximum coverage.** — Where the insurer offered the insured UM/UIM coverage equal to the liability limits of the insured's policy; the insured rejected coverage in writing; the insurer periodically delivered declaration pages to the insured, which indicated the amounts of liability and UM/UIM coverage provided under the policy but did not expressly inform the insured that UM/UIM coverage equal to the limits of liability had been rejected, the rejection was invalid because it did not provide the premium costs for each available coverage option and because the rejection was not

made a part of the written policy. *Jordan v. Allstate Ins. Co.*, 2010-NMSC-051, 149 N.M. 162, 245 P.3d 1214.

Where the insurer offered the insured UM/UIM coverage equal to the liability limits of the insured's policy and provided price quotations for each available coverage option; and the insured rejected coverage in writing, the rejection was invalid because it was not made a part of the written policy. *Jordan v. Allstate Ins. Co.*, 2010-NMSC-051, 149 N.M. 162, 245 P.3d 1214.

**Punitive damages are improper when not predicated upon actual damages.** — Where an uninsured motorist, fleeing from police, struck defendant's unoccupied vehicle, which sustained disabling property damage from the collision, and where plaintiff, defendant's automobile insurer, paid defendant the policy's $10,000 coverage limit for uninsured/underinsured (UM/UIM) property damage, and where defendant thereafter demanded that punitive damages arising from the property damage be paid from his UM/UIM bodily injury coverage even though no one was in the vehicle at the time of the accident and no one sustained any bodily injury, the district court erred in awarding punitive damages under defendant's UM/UIM bodily injury coverage when he sustained only UM/UIM property damage and exhausted the coverage limit for UM/UIM property damage, because punitive damages are predicated upon actual damages and are properly awarded only for the same conduct that caused the actual damages and, as a matter of law, if the UM/UIM coverage limit for one kind of loss is exhausted, an insured cannot recover additional policy proceeds from the UM/UIM coverage limits for another kind of loss when the insured did not suffer that other kind of loss. *Fred Loya Ins. Co. v. Swiech*, 2018-NMCA-022.

**Recovery of punitive damages regardless of insurance contract.** — Punitive damages are as much a part of the potential award under the uninsured motorist statute as damages for bodily injury, and therefore they cannot be contracted away in an insurance contract. Thus a policy holder may recover punitive damages regardless of the insurance contract. *Stinbrink v. Farmers Ins. Co.*, 1990-NMSC-108, 111 N.M. 179, 803 P.2d 664.

**Punitive damages offset by recovery of actual damages.** — Although underinsured motorist coverage includes punitive damages, such coverage does not negate a valid offset provision in the insurance policy and the insured's recovery of actual damages from the tortfeasor may be offset against the underinsured coverage. *Manzanares v. Allstate Ins. Co.*, 2006-NMCA-104, 140 N.M. 227, 141 P.3d 1281, cert. denied, 2006-NMCERT-008, 140 N.M. 423, 143 P.3d 185.

**Punitive damages after death of uninsured motorist.** — An insured cannot recover punitive damages from his insurer when the uninsured motorist dies before an award is made, since he would not be legally entitled to recover those damages from the estate of the uninsured motorist. *State Farm Mut. Auto. Ins. Co. v. Maidment*, 1988-NMCA-060, 107 N.M. 568, 761 P.2d 446, cert. denied, 107 N.M. 413, 759 P.2d 200.

**Jurisdiction over appeal of punitive damages award.** — The court of appeals has jurisdiction of an appeal of an award of punitive damages in an uninsured motorist claim. Although the obligations of an insurer are determined by application of contract law principles to the particular terms of an insurance policy, the court has jurisdiction over uninsured motorist claims against an insurer where the insurer's liability is contingent upon the tort liability of the uninsured motorist. *State Farm Mut. Auto. Ins. Co. v. Maidment*, 1988-NMCA-060, 107 N.M. 568, 761 P.2d 446, cert. denied, 107 N.M. 413, 759 P.2d 200.

**Law reviews.** — For note, "Uninsured Motorist Arbitration," see 3 N.M.L. Rev. 220 (1973).

For annual survey of New Mexico law relating to commercial law, see 13 N.M.L. Rev. 293 (1983).

For annual survey of New Mexico law relating to torts, see 13 N.M.L. Rev. 473 (1983).

For annual survey of New Mexico insurance law, see 20 N.M.L. Rev. 341 (1990).

For note, "The Court Rules on Underinsured Motorist Coverage; Keep It in the Family: *Mountain States Mut. Cas. Co. v. Martinez,"* see 24 N.M.L. Rev. 517 (1994).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7 Am. Jur. 2d Automobile Insurance §§ 293 to 298.

"Uninsured motorist" coverage, 79 A.L.R.2d 1252.

What constitutes an "uninsured" or "unknown" vehicle or motorist with uninsured motorist coverage, 26 A.L.R.3d 883.

Time limitations as to claims based on uninsured motorist clause, 28 A.L.R.3d 580.

What constitutes an "automobile" for purposes of uninsured motorist provisions, 65 A.L.R.3d 851.

Coverage under uninsured motorist clause of injury inflicted intentionally, 72 A.L.R.3d 1161.

Insured's right to bring direct action against insurer for uninsured motorist benefits, 73 A.L.R.3d 632.

Who is "named insured" within meaning of automobile insurance policy, 91 A.L.R.3d 1280.

Who is "member" or "resident" of same "family" or "household," within no-fault or uninsured motorist provisions of motor vehicle insurance policy, 96 A.L.R.3d 804.

Operation or use of vehicle outside scope of permission as rendering it uninsured within meaning of uninsured motorist coverage, 17 A.L.R.4th 1322.

Uninsured motorist endorsement: validity and enforceability of policy provision purporting to authorize deduction of no-fault benefits from amounts payable under uninsured motorist endorsement, 20 A.L.R.4th 1104.

Combining or "stacking" uninsured motorist coverages provided in policies issued by different insurers to same insured, 21 A.L.R.4th 211.

Combining or "stacking" uninsured motorist coverages provided in single policy applicable to different vehicles of individual insured, 23 A.L.R.4th 12.

Combining or "stacking" uninsured motorist coverages provided in separate policies issued by same insurer to different insureds, 23 A.L.R.4th 108.

Uninsured and underinsured motorist coverage: recoverability, under uninsured or underinsured motorist coverage, of deficiencies in compensation afforded injured party by tortfeasor's liability coverage, 24 A.L.R.4th 13.

Right to recover under uninsured or underinsured motorist insurance for injuries attributable to joint tortfeasors, one of whom is insured, 24 A.L.R.4th 63.

Validity, construction, and effect of "consent to sue" clauses in uninsured motorist endorsement of automobile insurance policy, 24 A.L.R.4th 1024.

Combining or "stacking" uninsured motorist coverages provided in separate policies issued by same insurer to same insured, 25 A.L.R.4th 6.

Combining or "stacking" uninsured motorist coverages provided in fleet policy, 25 A.L.R.4th 896.

Applicability of uninsured motorist statutes to self-insurers, 27 A.L.R.4th 1266.

Combining or "stacking" uninsured motorist coverages provided in policies issued by different insurers to different insureds, 28 A.L.R.4th 362.

Uninsured motorist coverage: validity of exclusion of injuries sustained by insured while occupying "owned" vehicle not insured by policy, 30 A.L.R.4th 172.

Right of insurer issuing "uninsured motorist" coverage to intervene in action by insured against uninsured motorist, 35 A.L.R.4th 757.

Statutory or policy exclusion, from automobile no-fault coverage, of property damage covered by homeowner's policy of household member who is owner, registrant, or operator of vehicle involved, 41 A.L.R.4th 973.

Uninsured motorist coverage: injuries to motorcyclists as within affirmative or exclusionary terms of automobile insurance policy, 46 A.L.R.4th 771.

Validity, under insurance statutes, of coverage exclusion for injury to or death of insured's family or household members, 52 A.L.R.4th 18.

Punitive damages as within coverage of uninsured or underinsured motorist insurance, 54 A.L.R.4th 1186.

Right of insured, precluded from recovering against owner or operator of uninsured motor vehicle because of governmental immunity, to recover uninsured motorist benefits, 55 A.L.R.4th 806.

What constitutes use of vehicle "in the automobile business" within exclusionary clause of liability policy, 56 A.L.R.4th 300.

What constitutes "entering" or "alighting from" vehicle within meaning of insurance policy, or statute mandating insurance coverage, 59 A.L.R.4th 149.

What constitutes single accident or occurrence within liability policy limiting insurer's liability to a specified amount per accident or occurrence, 64 A.L.R.4th 668.

Automobile insurance: umbrella or catastrophe policy automobile liability coverage as affected by primary policy "other insurance" clause, 67 A.L.R.4th 14.

Automobile uninsured motorist coverage: "Legally entitled to recover" clause as barring claim compensable under workers' compensation statute, 82 A.L.R.4th 1096.

"Excess" or "umbrella" insurance policy as providing coverage for accidents with uninsured or underinsured motorists, 2 A.L.R.5th 922.

Uninsured and underinsured motorist coverage: validity, construction and effect of policy provision purporting to reduce coverage by amount paid or payable under workers' compensation law, 31 A.L.R.5th 116.

Right of employer or workers' compensation carrier to lien against, or reimbursement out of, uninsured or underinsured motorist proceeds payable to employee injured by third party, 33 A.L.R.5th 587.

Validity and construction of provision of uninsured or underinsured motorist coverage that damages under the coverage will be reduced by amount of recovery from tortfeasor, 40 A.L.R.5th 603.

Automobile insurance coverage for drive-by shootings and other incidents involving the intentional discharge of firearms from moving motor vehicles, 41 A.L.R.5th 91.

Requirement that multicoverage umbrella insurance policy offer uninsured or underinsured motorist coverage equal to liability limits under umbrella provisions, 52 A.L.R. 5th 451.

Validity of territorial restrictions on uninsured/underinsured coverage in automobile insurance policies, 55 A.L.R.5th 747.

Automobile insurance: what constitutes "occupying" under owned-vehicle exclusion on uninsured- or underinsured-motorist coverage of automobile insurance policy, 59 A.L.R.5th 191.

Who is "member" or "resident" of same "family" or "household" within no-fault or uninsured motorist provisions of motor vehicle insurance policy, 66 A.L.R.5th 269.

Uninsured motorist indorsement: construction and application of requirement that there be "physical contact" with unidentified or hit-and-run vehicle; "miss-and-run" cases, 77 A.L.R.5th 319.

Uninsured motorist indorsement: general issues regarding requirement that there be "physical contact" with unidentified or hit-and-run vehicle, 78 A.L.R.5th 341.

## 66-5-302. Uninsured motorist; payment of arbitration fee.

No arbitrator shall require the payment of a fee in advance of the arbitration of any controversy arising under an uninsured motorist provision of a motor vehicle or automobile liability insurance policy. The arbitrator may award the costs of arbitration to the prevailing party.

**History:** 1953 Comp., § 64-24-106, enacted by Laws 1969, ch. 18, § 3; recompiled as 1953 Comp., § 64-5-302, by Laws 1978, ch. 35, § 326.

**ANNOTATIONS**

**Apportionment of arbitration costs.** — The uninsured motorists' insurance statute and the New Mexico Arbitration Act are not in a state of repugnant conflict on the issue of apportionment of arbitration costs. The Arbitration Act merely encompasses the uninsured motorists' insurance statute; it allows the arbitrator to award costs of arbitration to the prevailing party (as does the uninsured motorists' insurance statute), unless the parties contract to award it in some other way. *Stinbrink v. Farmers Ins. Co.*, 1990-NMSC-108, 111 N.M. 179, 803 P.2d 664.

**Insurance policy may not require each party to bear own arbitration costs.** — An insurance policy may not mandate that each party bear its own arbitration costs because the statute provides that an arbitrator may award costs of the arbitration to the prevailing party. *Stinbrink v. Farmers Ins. Co.*, 1990-NMSC-108, 111 N.M. 179, 803 P.2d 664.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7 Am. Jur. 2d Automobile Insurance §§ 336 to 338.

What issues are arbitrable under arbitration provision of uninsured motorist insurance, 29 A.L.R.3d 328.

61A C.J.S. Motor Vehicles § 563.19.

## 66-5-303. Uninsured motorist; judicial review [of] arbitration award.

After a party to an arbitration proceeding involving an uninsured motorist receives notice of an award, the party may make a motion to the district court for an order confirming the award, at which time the court shall issue a confirming order unless the award is modified or corrected pursuant to Section 44-7A-21 or 44-7A-25 NMSA 1978 or is vacated pursuant to Section 44-7A-24 NMSA 1978.

**History:** 1978 Comp., § 66-5-303, enacted by Laws 2003, ch. 427, § 1.

**ANNOTATIONS**

**Cross references.** — For procedures governing administrative appeals to the district court, *see* Rule 1-074 NMRA.

**Repeals and reenactments.** — Laws 2003, ch. 427, § 1 repealed 66-5-303 NMSA 1978, as enacted by Laws 1969, ch. 18, § 4, and enacted a new section, effective June 20, 2003.

**Unilateral demand not sufficient where policy requires bilateral agreement.** — New Mexico law does not require arbitration of an uninsured motorist claim upon the unilateral demand of either the insurer or the insured where the insurance policy states that disputes regarding whether the insured is entitled to receive payment under the policy, or the amount of payment due, will be submitted to arbitration only if both the insurer and insured consent. *McMillian v. Allstate Indem. Co.*, 2004-NMSC-002, 135 N.M. 17, 84 P.3d 65.

**Binding arbitration not compelled.** — Where the uninsured motorist endorsement provides for arbitration only upon the consent of both parties, and where the superintendent of insurance has approved such an endorsement, New Mexico law does not compel binding arbitration. *McMillian v. Allstate Indem. Co.*, 2004-NMSC-002, 135 N.M. 17, 84 P.3d 65.

**Arbitration provision providing for limited de novo appeal substantively unconscionable.** — The limited de novo appeal provision in an insurance contract, providing for mandatory arbitration which would be binding on both parties for any award of damages not exceeding the limits of the Mandatory Financial Responsibility Act but providing for de novo appeal by either party of awards over that amount, violates

public policy and is void as substantively unconscionable. *Padilla v. State Farm Mut. Auto. Ins. Co.*, 2003-NMSC-011, 133 N.M. 661, 68 P.3d 901.

**Law reviews.** — For note, "Uninsured Motorist Arbitration," see 3 N.M.L. Rev. 220 (1973).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Validity and enforceability of provisions for binding arbitration, and waiver thereof, 24 A.L.R.3d 1325.

Uninsured and underinsured motorist coverage: enforceability of policy provision limiting appeals from arbitration, 23 A.L.R.5th 801.

# PART 5
# IDENTIFICATION CARDS

## 66-5-401. Identification cards; application.

A. A person who does not have a valid New Mexico driver's license may be issued an identification card by the department. An application for an identification card or renewal of an identification card shall be made upon a form furnished by the department.

B. The department shall establish two distinct identification cards as provided in Section 66-5-405 NMSA 1978:

(1) a REAL ID-compliant identification card; and

(2) a standard identification card.

C. An application for a REAL ID-compliant identification card shall contain the applicant's full legal name; date of birth; sex; and current New Mexico residence address and shall briefly describe the applicant.

D. An application for a standard identification card shall bear the applicant's full name; date of birth; sex; and current New Mexico residence address and shall briefly describe the applicant.

E. The secretary shall establish by rule documents that may be accepted as evidence of the residency of the applicant.

F. A person applying for or renewing a REAL ID-compliant identification card shall provide documentation required by the federal government of the applicant's identity; date of birth; social security number, if applicable; address of current residence; and lawful status. The department shall verify the applicant's lawful status and social security number, if applicable, through a method approved by the federal government.

Pursuant to the federal REAL ID Act of 2005, the secretary shall establish a written, defined exception process to allow a person to demonstrate the person's identity, age and lawful status. The process shall allow a person to use a certified letter of enrollment or a valid identification card issued by a federally recognized Indian nation, tribe or pueblo to demonstrate the person's identity or age or to demonstrate the person's lawful status, if applicable. A person with lawful status may apply for a REAL ID-compliant identification card or a standard identification card. Every application for an identification card shall be signed by the applicant or the applicant's parent or guardian. The secretary may, for good cause, revoke or deny the issuance of an identification card.

G. An application by a foreign national with lawful status for a REAL ID-compliant identification card shall contain the unique identifying number and expiration date, if applicable, of the foreign national's valid passport, valid visa, employment authorization card issued under the applicant's approved deferred action status or other arrival-departure record or document issued by the federal government that conveys lawful status. The department may issue to an eligible foreign national applicant a REAL ID-compliant identification card that is valid for a period not to exceed the duration of the applicant's lawful status; provided that if that date cannot be determined by the department and the applicant is not a legal permanent resident, the identification card shall expire one year after the effective date of the identification card.

H. The department shall issue a standard identification card to an applicant who is otherwise eligible but who does not provide proof of lawful status and who affirmatively acknowledges that the applicant understands that a standard identification card may not be valid for federal purposes. An applicant who does not provide proof of lawful status shall only apply for a standard identification card. An application for a standard identification card shall include proof of the applicant's identity and age.

I. The secretary may adopt rules providing for the proration of fees due to shortened validity periods authorized pursuant to the provisions of this section.

J. Within the forms prescribed by the department for identification card applications, a space shall be provided to show whether the applicant is a donor as provided in the Jonathan Spradling Revised Uniform Anatomical Gift Act [Chapter 24, Article 6B NMSA 1978]. A person applying for an identification card may indicate that person's status on the space provided on the application. The donor status indicated by the applicant shall be displayed on the identification card. The form and identification card shall be signed by the donor in the presence of a witness who shall also sign the form in the donor's presence.

**History:** 1953 Comp., § 64-5-401, enacted by Laws 1978, ch. 35, § 328; 1985, ch. 11, § 1; 1989, ch. 318, § 18; 1999, ch. 76, § 3; 2004, ch. 59, § 20; 2007, ch. 323, § 33; 2016, ch. 79, § 9; 2019, ch. 167, § 10.

## ANNOTATIONS

**The 2019 amendment,** effective October 1, 2019, provided for REAL ID-compliant identification cards, provided that the department of motor vehicles shall establish REAL ID-compliant identification cards and standard identification cards, and provided the required contents of a standard identification card; in Subsection A, after "New Mexico driver's license", deleted "or driving authorization card"; added a new Subsection B and new subsection designation "C"; in Subsection C, after "application for", deleted "an" and added "REAL ID-compliant"; added new Subsection D and new subsection designations "E" and "F" and redesignated former Subsections B through E as Subsections G through J, respectively; in Subsection E, after "residency of the applicant.", deleted the remainder of the subsection, which related to identification cards that meet federal requirements; in Subsection F, after "renewing", deleted "an" and added "a REAL ID-compliant", after "identification card", deleted "that meets federal requirements to be accepted by federal agencies for official federal purposes", after "may apply for", deleted "an" and added "REAL ID-compliant", after the next occurrence of "identification card", deleted "that meets federal agencies for official federal purposes", after "or", deleted "an" and added "a standard", and after the next occurrence of "identification card", deleted "not intended to be accepted by federal agencies for official federal purposes"; in Subsection G, after "lawful status for", deleted "an" and added "a REAL ID-compliant", after the next occurrence of "identification card", deleted "that meets federal requirements to be accepted by federal agencies for official federal purposes", after "foreign national applicant", deleted "an" and added "a REAL ID-compliant", after the next occurrence of "identification card", deleted "that meets federal requirements to be accepted by federal agencies for official federal purposes"; and in Subsection H, after "shall issue", deleted "an" and added "a standard", after the next occurrence of "identification card", deleted "not intended to be accepted by federal agencies for official federal purposes", after "applicant understands that", deleted "an" and added "a standard", after the next occurrence of "identification card", deleted "not intended to be accepted by federal agencies for official federal purposes is" and added "may", after "not", added "be", after "shall only apply for", deleted "an" and added "a standard", after the next occurrence of "identification card", deleted "not intended to be accepted by federal agencies for official federal purposes. For", after "An application for", deleted "an" and added "a standard", after the next occurrence of "identification card", deleted "not intended to be accepted by federal agencies for official federal purposes, the secretary", and after "shall", deleted "accept as" and added "include", and deleted former Paragraphs (1) through (5).

**The 2016 amendment,** effective May 18, 2016, created two tiers of identification cards, those that meet federal requirements to be accepted by federal agencies for official federal purposes and those not intended to be accepted by federal agencies for official federal purposes; in the catchline, added "application"; in Subsection A, after "valid New Mexico driver’s license", added "or driving authorization card", after "may be issued an identification card by the department", deleted "certified by the applicant as to true name, correct age and other identifying data as the department may require" and added the next nine sentences; and added new Subsections B, C and D, and redesignated former Subsection B as Subsection E.

**The 2007 amendment,** effective July 1, 2007, changed the name of the act.

**The 2004 amendment,** effective March 4, 2004, added Subsection B.

**The 1999 amendment,** effective July 1, 1999, in the first sentence, deleted "thirteen years of age or older" following "Any person", substituted "department" for "division" in two places, substituted "applicant" for "registrant and attested to by the division", added the language beginning "by the applicant" to the end of the second sentence, and in the third sentence substituted "secretary" for "director" and deleted "shown" following "good cause".

**The 1989 amendment,** effective July 1, 1989, added the last sentence.

## 66-5-402. Persons eligible for identification cards.

The department may issue an identification card only to a person who is a New Mexico resident and who does not have a valid New Mexico license.

**History:** 1953 Comp., § 64-5-402, enacted by Laws 1978, ch. 35, § 329; 1987, ch. 10, § 1; 1993, ch. 328, § 3; 1999, ch. 76, § 4; 2016, ch. 79, § 10.

**ANNOTATIONS**

**The 2016 amendment,** effective May 18, 2016, removed certain eligibility requirements for persons applying for identification cards; after "The department", deleted "shall" and added "may", deleted the subsection designation "A", after "who does not have a valid New Mexico", deleted "driver's", after "license", deleted the remainder of former Subsection A; and deleted Subsection B.

**The 1999 amendment,** effective July 1, 1999, substituted "or its certified copy, a certificate of baptism, a valid passport" for "a certificate of baptism" in Subsection A.

**The 1993 amendment,** effective July 1, 1993, substituted "department" for "division" in the introductory language and "that the department" for "which the director" in Subsection A.

## 66-5-403. Expiration of identification cards; duration; renewal.

A. Except as provided in Subsections B through E of this section, every identification card shall be issued for a period not to exceed four years and shall expire four years after the effective date of the identification card.

B. An identification card may be renewed within ninety days prior to its expiration or at an earlier date approved by the department. An identification card may be renewed

by mail or telephonic or electronic means pursuant to regulations adopted by the department, except the department shall not renew by mail or telephonic or electronic means a REAL ID-compliant identification card if prohibited by federal law. The regulations shall ensure adequate security measures to safeguard personal information that is obtained in the issuance of an identification card.

C. At the option of the applicant for an identification card, a card may be issued for a period of eight years, provided that the applicant pays the amount required for an identification card issued for a term of eight years. An identification card issued pursuant to the provisions of this subsection shall expire eight years after the effective date of the identification card.

D. A REAL ID-compliant identification card issued to a foreign national with lawful status shall expire on the earlier of:

(1) four years after the effective date of the identification card or eight years after the effective date of the identification card if the applicant opted for a period of eight years pursuant to Subsection C of this section; or

(2) the expiration date of the applicant's lawful status; provided that if that date cannot be determined by the department and the applicant is not a legal permanent resident, the identification card shall expire one year after the effective date of the identification card.

E. A standard identification card shall expire four years after the effective date of the identification card.

**History:** 1953 Comp., § 64-38-3, enacted by Laws 1973, ch. 269, § 3; recompiled as 1953 Comp., § 64-5-403, by Laws 1978, ch. 35, § 330; 1999, ch. 222, § 4; 2010, ch. 42, § 3; 2010, ch. 70, § 3; 2016, ch. 79, § 11; 2019, ch. 167, § 11.

## ANNOTATIONS

**The 2019 amendment,** effective October 1, 2019, revised the four-year issuance period for identification cards, and provided for REAL ID-compliant identification cards; in Subsection A, after "shall expire", deleted "on the last day of the month of the identified person's birth in the fourth year" and added 'four years"; in Subsection B, after "electronic means", deleted "an" and added "a REAL ID-compliant", after "identification card", deleted "that meets federal requirements to be accepted by federal agencies for official federal purposes"; in Subsection C, deleted "The identification card may be renewed within ninety days prior to its expiration."; in Subsection D, in the introductory clause, deleted "An" and added "A REAL ID-compliant", after "identification card", deleted "that meets federal requirements to be accepted by federal agencies for official federal purposes", in Paragraph D(1), deleted "the last day of the month of the applicant's birth in the fourth year" and added "four years"; in Subsection E, deleted "An" and added "A standard", after "identification card", deleted "not intended to be

accepted by federal agencies for official federal purposes issued to an applicant who provides proof of lawful status", after "shall expire", deleted "on the last day of the month of the applicant's birth in the fourth year" and added "four years"; and deleted former Subsections F and G.

**The 2016 amendment,** effective May 18, 2016, amended the duration of certain identification cards; in Subsection A, after "Except as provided in", deleted "Subsection B or C" and added "Subsections B through G"; in Subsection B, after "regulations adopted by the department", added "except the department shall not renew by mail or telephonic or electronic means an identification card that meets federal requirements to be accepted by federal agencies for official federal purposes if prohibited by federal law"; in Subsection C, after "this subsection shall expire", deleted "on the last day of the month of the applicant's birth in the eighth year" and added "eight years"; and added new Subsections D through G.

**The 2010 amendment,** effective July 1, 2010, in Subsection A, after "Subsection B", added "or C"; and in Subsection B, in the first sentence, at the beginning of the sentence, added the word "An" and after "expiration", added the remainder of the sentence; and added the second and third sentences.

**The 1999 amendment,** effective July 1, 1999, designated the formerly undesignated provisions as Subsection A, added the exception at the beginning of that subsection, and added Subsection B.

## 66-5-404. Duplicate cards.

In the event an identification card issued pursuant to Section 66-5-402 NMSA 1978 is lost, stolen, destroyed or mutilated or a name or address is changed, the person to whom the identification card was issued may obtain a replacement upon furnishing satisfactory proof of age and identity to the department and paying the required fee. Any person who loses an identification card and who after obtaining a replacement finds the original card shall immediately surrender the original card to the department. The same documentary evidence shall be furnished for a replacement as for an original identification card.

**History:** 1953 Comp., § 64-5-404, enacted by Laws 1978, ch. 35, § 331; 1999, ch. 76, § 5.

**ANNOTATIONS**

**Cross references.** — For the required fee, *see* 66-5-408 NMSA 1978.

**The 1999 amendment,** effective July 1, 1999, in three places substituted "department" for "division" and "replacement" for "duplicate"; in the first sentence inserted "issued

pursuant to Section 66-5-402 NMSA 1978", inserted "stolen", substituted "a name or address is changed" for "a new name is acquired", and substituted "age and identity" for "such fact"; and made minor stylistic changes.

## 66-5-405. Contents of card.

A. A REAL ID-compliant identification card shall bear the applicant's full legal name; date of birth; sex; current New Mexico residence address; full-face or front-view digital photograph of the identification card holder; a unique identification card number; a date of issuance; an expiration date; a brief description of the identification card holder; and the signature of the holder, and the identification card shall indicate donor status.

B. A standard identification card shall bear the applicant's full name; date of birth; sex; current New Mexico residence address; full-face or front-view digital photograph of the identification card holder; a unique identification card number; a date of issuance; an expiration date; a brief description of the identification card holder; and the signature of the holder, and the identification card shall indicate donor status.

C. A valid license or identification card shall satisfy the identity, age and New Mexico residency requirements for the issuance of a standard identification card to an applicant.

D. All identification cards of persons under the age of twenty-one years shall have a printed legend indicating that the person is under twenty-one.

E. A standard identification card shall not include a gold star pursuant to Section 66-5-15.3 NMSA 1978 and shall bear the statement:

"STATE OF NEW MEXICO IDENTIFICATION

CARD NO._____

This card is provided solely for the purpose of establishing that the bearer described on the card was not the holder of a New Mexico driver's license as of the date of issuance of this card. This identification card is not a license. ISSUED FOR IDENTIFICATION PURPOSES ONLY. NOT INTENDED FOR FEDERAL PURPOSES.".

F. A REAL ID-compliant identification card shall be distinguishable in color or design from a standard identification card but only to the extent that a standard identification card shall bear the statement: "NOT INTENDED FOR FEDERAL PURPOSES", and a REAL ID-compliant identification card shall include a gold star pursuant to Section 66-5-15.3 NMSA 1978.

G. A REAL ID-compliant identification card shall bear the statement:

"STATE OF NEW MEXICO IDENTIFICATION

CARD NO._____

This card is provided for the purpose of establishing that the bearer described on the card was not the holder of a New Mexico driver's license as of the date of issuance of this card. This identification card is not a license. ISSUED FOR IDENTIFICATION PURPOSES ONLY.".

H. A REAL ID-compliant identification card issued to a foreign national with lawful status who fails to prove that the foreign national's lawful status will not expire prior to the date on which the identification card applied for would expire but for the person being a foreign national shall clearly indicate on its face and in the machine readable zone that it is temporary and shall bear the word "TEMPORARY".

**History:** 1953 Comp., § 64-5-405, enacted by Laws 1978, ch. 35, § 332; 1987, ch. 10, § 2; 2004, ch. 59, § 21; 2016, ch. 79, § 12; 2019, ch. 167, § 12.

## ANNOTATIONS

**The 2019 amendment,** effective October 1, 2019, provided for REAL ID-compliant identification cards; in Subsection A, after the subsection designation, deleted "An" and added "A REAL ID-compliant", deleted former Subsections B and C, added new subsection designation "D" and redesignated former Subsections B and C as Subsections E and F; in Subsection E, in the introductory clause, deleted "An" and added "A standard", after "identification card", deleted "not intended to be accepted by federal agencies for official federal purposes" and added "shall not include a gold star pursuant to Section 66-5-15.3 NMSA 1978 and", and after "NOT", deleted "INTENDED"; in Subsection F, added "A REAL ID-compliant", after "identification card", deleted "that meets federal requirements to be accepted by federal agencies for official federal purposes", after "design from", deleted "an" and added "a standard", after "identification card", deleted "not intended to be accepted by federal agencies for official federal purposes and" and added the remainder of the subsection; added new subsection designation G and redesignated former Subsection D as Subsection H; in Subsection G, added "A REAL ID-compliant identification card"; and in Subsection H, deleted "An" and added "A REAL ID-compliant", and after "identification card", deleted "that meets federal requirements to be accepted by federal agencies for official federal purposes".

**The 2016 amendment,** effective May 18, 2016, amended the required contents of identification cards; after the catchline, deleted "The identification card shall adequately describe the registrant and bear his picture that shall show a full face or front view for all registrants and" and added the subsection designation "A"; in Subsection A, added "An identification card shall bear the applicant’s full legal name; date of birth; sex; current New Mexico residence address; full-face or front-view digital photograph of the identification card holder; a unique identification card number; a date of issuance; an expiration date; a brief description of the identification card holder and the signature of

the holder, and the identification card shall"; added the subsection designation "B"; in Subsection B, added "An", after "identification card", added "not intended to be accepted by federal agencies for official federal purposes", and after "shall bear the", deleted "following", after "ISSUED FOR IDENTIFICATION PURPOSES ONLY", added "NOT FOR FEDERAL PURPOSES"; and added new Subsections C and D.

**The 2004 amendment,** effective March 4, 2004, added "and indicate donor status" after "registrants" in the first sentence.

## 66-5-406. Public entities; no liability.

No public entity shall be liable for any loss or injury resulting directly or indirectly from false or inaccurate information contained in identification cards issued by the motor vehicle division.

**History:** 1953 Comp., § 64-5-406, enacted by Laws 1978, ch. 35, § 333.

## 66-5-407. Reliance upon information.

No person shall be held responsible in a court of law for any act or failure to act which is directly attributable to his reliance upon the information contained in an identification card issued pursuant to Section [Sections] 66-5-401 through 66-5-408 NMSA 1978; provided he has made a reasonable attempt to ascertain that the information is correct, has not been altered and the card belongs to the person presenting it.

**History:** 1953 Comp., § 64-5-407, enacted by Laws 1978, ch. 35, § 334.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material in this section was inserted by the compiler and it is not part of the law.

## 66-5-408. Fees.

A. Upon application for an identification card with a four-year term, there shall be paid to the department a fee of five dollars ($5.00). Upon application for an identification card with an eight-year term, there shall be paid to the department a fee of ten dollars ($10.00). A fee shall not be charged to an applicant for an identification card if the applicant is at least seventy-five years of age or a homeless individual.

B. The department with the approval of the governor may increase the amount of the identification card fee by an amount not to exceed three dollars ($3.00) for the purpose of implementing an enhanced licensing system; provided that for an identification card issued for an eight-year period, the amount of the fee shall be twice the amount charged for other identification cards. The additional amounts collected

pursuant to this subsection are appropriated to the department to defray the expense of the new system of licensing and for use as set forth in the provisions of Subsection F of Section 66-6-13 NMSA 1978. Unexpended and unencumbered balances from fees collected pursuant to the provisions of this subsection at the end of any fiscal year shall not revert to the general fund but shall be expended by the department in fiscal year 2010 and subsequent fiscal years.

C. As used in this section, "homeless individual" means an individual:

(1) who lacks a fixed, regular and adequate nighttime residence, including an individual who:

(a) lives in the housing of another person due to that individual's loss of housing, economic hardship or other reason related to that individual's lack of a fixed residence;

(b) lives in a motel, hotel, trailer park or camping ground due to the lack of alternative adequate accommodations;

(c) lives in an emergency or transitional shelter;

(d) sleeps in a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings; or

(e) lives in an automobile, a park, a public space, an abandoned building, substandard housing, a bus station, a train station or a similar setting; and

(2) whose homelessness can be verified through an attestation, which shall not be required to be notarized, by one of the following:

(a) a public or private governmental or nonprofit agency that provides services to homeless individuals;

(b) a local education agency homeless liaison, school counselor or school nurse;

(c) a social worker licensed in the state; or

(d) the homeless individual.

**History:** 1953 Comp., § 64-5-408, enacted by Laws 1978, ch. 35, § 335; 1985, ch. 66, § 3; 1987, ch. 10, § 3; 1987, ch. 278, § 2; 1990, ch. 120, § 31; 1999, ch. 222, § 5; 2009, ch. 156, § 4; 2023, ch. 78, § 1.

## ANNOTATIONS

**Cross references.** — For provisions regarding payment in foreign currency under the Motor Vehicle Code, *see* 66-6-36 NMSA 1978.

**The 2023 amendment,** effective June 16, 2023, removed the fee requirement for issuance of an identification card to a homeless individual, and defined "homeless individual" as used in this section; in Subsection A, after "seventy-five years of age", added "or a homeless individual"; and added Subsection C.

**The 2009 amendment,** effective July 1, 2009, in Subsection B, after "new system of licensing", added the remainder of the sentence and added the last sentence.

**The 1999 amendment,** effective July 1, 1999, in Subsection A, inserted "with a four-year term" and substituted "department" for "division" in the first sentence, and substituted "Upon application for an identification card with an eight-year term, there shall be paid to the department a fee of ten dollars ($10.00). A fee shall not be charged" for "but no fee shall be charged"; in Subsection B, inserted "provided that for an identification card issued for an eight-year period, the amount of the fee shall be twice the amount charged for other identification cards" in the first sentence, and substituted "department" for "division" in the second sentence.

**The 1990 amendment,** effective July 1, 1990, added the language beginning "but no fee" at the end of Subsection A, deleted former Subsection B which read "The receipts from the fees required in Subsection A of this section shall be deposited in the general fund", designated former Subsection C as present Subsection B, and substituted "department" for "director" in the first sentence thereof.

## 66-5-409. Unlawful use of identification card.

A. It is a misdemeanor for any person to:

(1) use or possess an altered, forged or fictitious identification card;

(2) alter or forge an identification card or make a fictitious identification card;

(3) lend the person's identification card to any other person or to knowingly permit the use of the person's identification card by another;

(4) display or represent as one's own any identification card not issued to the person; or

(5) make or permit any unlawful use of the identification card issued to, or received or obtained by, the person.

B. It is a felony for any person to:

(1) knowingly or willfully provide a false or fictitious name or document in any application for an identification card or knowingly make a false statement or conceal a material fact or otherwise commit a fraud in any such application; or

(2) induce or solicit another person, or conspire with another person, to violate this subsection.

C. For the purposes of this section, "identification card" means an identification card issued by the department pursuant to Section 66-5-401 or 66-5-404 NMSA 1978.

**History:** 1978 Comp., § 66-5-409, enacted by Laws 1991, ch. 160, § 13; 2016, ch. 79, § 13.

**ANNOTATIONS**

**The 2016 amendment,** effective May 18, 2016, established a penalty for making or permitting any unlawful use of an identification card, and increased the penalties for certain crimes connected to the application for an identification card; in Subsection A, Paragraph (5), deleted "use", added "make or permit any unlawful use of the identification card issued to, or received or obtained by, the person", added the subsection designation "B" and redesignated former Subsection B as Subsection C; in new Subsection B, added "It is a felony for any person to:", and designated the language from former Paragraph (5) of Subsection A as Paragraph (1) of Subsection B; in Paragraph (1), added "knowingly or willfully provide", and after "false or fictitious name", added "or document", and deleted former Paragraph (6) of Subsection A; and added new Paragraph 2 of Subsection B.

# PART 6
# IGNITION INTERLOCK LICENSES

## 66-5-501. Short title.

Sections 1 through 4 of this act [66-5-501 to 66-5-504 NMSA 1978] may be cited as the "Ignition Interlock Licensing Act".

**History:** Laws 2003, ch. 239, § 1.

**ANNOTATIONS**

**Cross references.** — For provisions regarding driving under the influence of intoxicating liquor or drugs, *see* 66-8-102 NMSA 1978.

For the interlock driving fund, *see* 66-8-102.3.

**Emergency clauses.** — Laws 2003, ch. 239, § 11 contained an emergency clause and was approved April 6, 2003.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Validity, construction, and application of interlock laws. 15 A.L.R.6th 375.

## 66-5-502. Definitions.

As used in the Ignition Interlock Licensing Act:

A. "denied" means the division has refused to issue an instruction permit, driver's license or provisional license pursuant to the provisions of Subsection D or E of Section 66-5-5 NMSA 1978;

B. "ignition interlock device" means a device, approved by the traffic safety bureau, that prevents the operation of a motor vehicle by an intoxicated or impaired person;

C. "ignition interlock license" means a driver's license issued to a person by the division that allows that person to operate a motor vehicle with an ignition interlock device after that person's driving privilege or driver's license has been revoked or denied. The division shall clearly mark an ignition interlock license to distinguish it from other driver's licenses; and

D. "revoked" means the division, pursuant to the provisions of Section 66-5-29 or 66-8-111 NMSA 1978, has terminated a person's driving privilege or driver's license for:

(1) driving while under the influence of intoxicating liquor or drugs; or

(2) a conviction of homicide by vehicle or great bodily harm by vehicle while under the influence of intoxicating liquor or drugs.

**History:** Laws 2003, ch. 239, § 2; 2005, ch. 268, § 1; 2007, ch. 316, § 2; 2007, ch. 317, § 3; 2007, ch. 319, § 48; 2013, ch. 101, § 2.

**ANNOTATIONS**

**The 2013 amendment,** effective July 1, 2013, defined "revoked" to included revocation for a conviction of homicide or great bodily harm while under the influence of intoxicating liquor or drugs; and added Paragraph (2) of Subsection D.

**The 2007 amendment,** effective June 15, 2007, defined "denied" as the refusal to issue a license; eliminated "denial for driving under the influence of intoxicating liquor or drugs"; and defined "revoked" as the termination of a driving privilege or driver’s license pursuant to Sections 66-5-29 or 66-8-11 NMSA 1978.

**The 2005 amendment,** effective June 17, 2005, defines "ignition interlock device" in Subsection B to mean a device that prevents the operation of a motor vehicle by an intoxicated or impaired person and deletes the former definition of "ignition interlock device" in Subsection B to be a regularly calibrated device that regulates the operation of a motor vehicle by measuring an operator's blood alcohol level before allowing the operator to start the vehicle and that periodically tests the operator's blood alcohol level while he operated the vehicle.

## 66-5-503. Ignition interlock license; requirements.

A. A person whose driving privilege or driver's license has been revoked or denied or who has not met the ignition interlock license requirement as a condition of reinstatement pursuant to Section 66-5-33.1 NMSA 1978 may apply for an ignition interlock license from the division.

B. An applicant for an ignition interlock license shall:

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

(2) sign an affidavit acknowledging that:

(a) operation by the applicant of any vehicle that is not equipped with an ignition interlock device is subject to penalties for driving with a revoked license;

(b) tampering or interfering with the proper and intended operation of an ignition interlock device may subject the applicant to penalties for driving with a license that was revoked for driving under the influence of intoxicating liquor or drugs or a violation of the Implied Consent Act [66-8-105 to 66-8-112 NMSA 1978]; and

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

C. A person who has been convicted of homicide by vehicle or great bodily harm by vehicle while under the influence of intoxicating liquor or drugs, as provided in Section 66-8-101 NMSA 1978, shall not be issued an ignition interlock license unless the person has completed serving the sentence for that crime, including any period of probation and parole.

**History:** Laws 2003, ch. 239, § 3; 2007, ch. 319, § 49; 2008, ch. 67, § 1; 2009, ch. 254, § 2; 2013, ch. 101, § 3.

**ANNOTATIONS**

**The 2013 amendment,** effective July 1, 2013, allowed the issuance of an ignition interlock license to a person convicted of homicide by vehicle or great bodily harm by vehicle while under the influence of intoxicating liquor or drugs after completion of the sentence for that crime; and in Subsection C, after "great bodily", deleted "injury" and added "harm" and after "ignition interlock license", added "unless the person has completed serving the sentence for that crime, including any period of probation and parole".

**The 2009 amendment,** effective July 1, 2009, in Subsection A, after "denied", added "or who has not met the ignition interlock license requirement as a condition of reinstatement pursuant to Section 66-5-33.1 NMSA 1978".

**The 2008 amendment,** effective February 29, 2008, added Subparagraph (b) of Paragraph (2) of Subsection B.

**The 2007 amendment,** effective June 15, 2007, changed "instructor's permit" to "driving privilege" and eliminated "provisional license".

## 66-5-504. Penalties.

A. A person who is issued an ignition interlock license and operates a vehicle that is not equipped with an ignition interlock device is driving with a license that was revoked for driving under the influence of intoxicating liquor or drugs or a violation of the Implied Consent Act [66-8-105 to 66-8-112 NMSA 1978] and may be subject to the penalties provided in Section 66-5-39 NMSA 1978.

B. A person who is issued an ignition interlock license and who knowingly and deliberately tampers or interferes or causes another to tamper or interfere with the proper and intended operation of an ignition interlock device may be subject to the penalties for driving with a license that was revoked for driving under the influence of intoxicating liquor or drugs or a violation of the Implied Consent Act as provided in Section 66-5-39 NMSA 1978.

**History:** Laws 2003, ch. 239, § 4; 2008, ch. 67, § 2.

**ANNOTATIONS**

**The 2008 amendment,** effective February 29, 2008, provided that driving without an ignition interlock device is driving with a revoked license for purposes of DWI or the Implied Consent Act and added Subsection B.

# ARTICLE 6
# Fees

## 66-6-1. Motorcycles; registration fees.

A. For the registration of motorcycles, the department shall collect the following fees for a twelve-month registration period:

(1) for a motorcycle having not more than two wheels in contact with the ground, twenty dollars ($20.00); and

(2) for a motorcycle having three wheels in contact with the ground or having a sidecar, twenty dollars ($20.00).

B. In addition to other fees required by this section, the department shall collect for each motorcycle an annual tire recycling fee of one dollar ($1.00) for a twelve-month registration period.

**History:** 1953 Comp., § 64-6-1, enacted by Laws 1978, ch. 35, § 336; 1983, ch. 266, § 2; 1987, ch. 347, § 17; 1994, ch. 117, § 18; 1994, ch. 126, § 18; 1995, ch. 44, § 6; 1999, ch. 49, § 5; 2003, ch. 270, § 1; 2003 (1st S.S.), ch. 3, § 11; 2023, ch. 126, § 1.

## ANNOTATIONS

**Cross references.** — For the definition of "motorcycle", *see* 66-1-4.11 NMSA 1978.

For registration, *see* 66-3-1 to 66-3-27 NMSA 1978.

For creation of motorcycle training fund, *see* 66-10-10 NMSA 1978.

**The 2023 amendment,** effective July 1, 2023, increased the annual registration fees for motorcycles; and in Subsection A, Paragraph A(1), after "with the ground", deleted "fifteen dollars ($15.00)" and added "twenty dollars ($20.00)", and in Paragraph A(2), after "sidecar", deleted "fifteen dollars ($15.00)" and added "twenty dollars ($20.00)".

**The 2003 amendment,** effective July 1, 2003, substituted "one dollar ($1.00)" for "fifty cents ($.50)" near the middle of Subsection B.

**The 2003 (1st S.S.) amendment,** effective March 1, 2004, substituted "fifteen dollars ($15.00)" for "eleven dollars ($11.00)" in Paragraphs (1) and (2) of Subsection A.

**The 1999 amendment,** effective July 1, 1999, substituted "department" for "division" in the introductory language of Subsection A and in Subsection B, deleted "Beginning July 1, 1994" at the beginning of Subsection B, and deleted Subsection C, which read "Two dollars ($2.00) of each fee collected pursuant to Paragraphs (1) and (2) of Subsection A of this section shall be credited to the motorcycle training fund".

**The 1995 amendment,** effective July 1, 1995, added "for a twelve-month registration period" at the end of the introductory paragraph in Subsection A and at the end of Subsection B.

**The 1994 amendment,** effective March 8, 1994, redesignated the undesignated paragraph as Subsection A; redesignated former Subsections A and B as Paragraphs A(1) and A(2); deleted an undesignated paragraph following Paragraph A(2), which required that $2.00 of the fees established by Paragraphs A(1) and A(2) be credited to the motorcycle training fund; and added Subsections B and C.

**There is no statutory requirement that fees paid be shown** upon the owner's copy of the registration certificate. There is a blank on the registration certificate for filling in such information but it is discretionary with the agent or employee issuing the registration certificate as to whether or not this information will be furnished on the certificate itself. 1960 Op. Att'y Gen. No. 60-76.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 63 to 73.

60 C.J.S. Motor Vehicles §§ 136(1) to 145.

## 66-6-2. Passenger vehicles; registration fees.

For the registration of motor vehicles other than motorcycles, trucks, buses and tractors, the division shall collect the following fees for each twelve-month registration period:

A. for a vehicle whose gross factory shipping weight is not more than two thousand pounds, twenty-seven dollars ($27.00); provided, however, that after five years of registration, calculated from the date when the vehicle was first registered in this or another state, the fee is twenty-one dollars ($21.00);

B. for a vehicle whose gross factory shipping weight is more than two thousand but not more than three thousand pounds, thirty-nine dollars ($39.00); provided, however, that after five years of registration, calculated from the date when the vehicle was first registered in this or another state, the fee is thirty-one dollars ($31.00);

C. for a vehicle whose gross factory shipping weight is more than three thousand pounds, fifty-six dollars ($56.00); provided, however, that after five years of registration, calculated from the date when the vehicle was first registered in this or another state, the fee is forty-five dollars ($45.00); and

D. for a vehicle registered pursuant to the provisions of this section, a tire recycling fee of one dollar fifty cents ($1.50).

**History:** 1953 Comp., § 64-6-2, enacted by Laws 1978, ch. 35, § 337; 1987, ch. 347, § 18; 1994, ch. 117, § 19; 1994, ch. 126, § 19; 1995, ch. 44, § 7; 2003, ch. 270, § 2; 2003 (1st S.S.), ch. 3, § 12.

**ANNOTATIONS**

**Cross references.** — For general definitions applicable to this section, *see* 66-1-4 to 66-1-4.20 NMSA 1978.

**The 2003 amendment,** effective July 1, 2003, in Subsection D, deleted "beginning July 1, 1994" at the beginning and substituted "one dollar fifty cents ($1.50)" for "one dollar ($1.00) for a twelve-month registration period" at the end.

**The 2003 (1st S.S.) amendment,** effective March 1, 2004, substituted "twenty-seven dollars ($27.00)" for "twenty dollars ($20.00)" and "twenty-one dollars ($21.00)" for "sixteen dollars ($16.00)" in Subsection A, "thirty-nine dollars ($39.00)" for "twenty-nine dollars ($29.00)" and "thirty-one dollars ($31.00)" for "twenty-three dollars ($23.00)" in Subsection B, and "fifty-six dollars ($56.00)" for "forty-two dollars ($42.00)" and "forty-five dollars ($45.00)" for "thirty-four dollars ($34.00)" in Subsection C.

**The 1995 amendment,** effective July 1, 1995, added "for a twelve-month registration period" at the end of the introductory paragraph and rewrote Subsection D which read "for each vehicle registered pursuant to the provisions of this section, an annual tire recycling fee of one dollar ($1.00) beginning July 1, 1994".

**The 1994 amendment,** effective March 8, 1994, added Subsection D.

**Duplicate amendments.** — Laws 1994, ch. 117, § 19 and Laws ch. 126, § 19 enacted identical amendments to 66-6-2 NMSA 1978, effective March 8, 1994. The section was set out as amended by Laws ch. 126, § 19. *See* 12-1-8 NMSA 1978.

**Self-propelled go-carts.** — The only classification which appears to be applicable to self-propelled go-carts is that of "motor vehicle," and therefore the utilization of Section 64-11-1.1, 1953 Comp. (similar to this section), to determine the correct registration fee would probably be appropriate. 1964 Op. Att'y Gen. No. 64-148.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 63 to 73.

60 C.J.S. Motor Vehicles §§ 136(1) to 145.

## 66-6-3. Trailers; registration fees.

A. For freight trailers, the division shall collect thirteen dollars ($13.00) for permanent registration or re-registration after sale or transfer.

B. For utility trailers, the division shall collect:

(1) for the annual registration of each utility trailer not permanently registered, seven dollars ($7.00) plus one dollar ($1.00) for each one hundred pounds or major fraction thereof of actual empty weight over five hundred pounds;

(2) for the permanent registration of utility trailers not used in commerce that have a gross vehicle weight of less than six thousand one pounds, thirty-three dollars ($33.00) plus seven dollars ($7.00) for each one hundred pounds or major fraction thereof of actual empty weight over five hundred pounds; and

(3) for the re-registration of permanently registered utility trailers after sale or transfer, seven dollars ($7.00).

C. For travel trailers, the division shall collect:

(1) for the annual registration of each travel trailer that is not permanently registered, seven dollars ($7.00) plus fifty cents ($.50) for each one hundred pounds or major fraction thereof of gross factory shipping weight over five hundred pounds or, if gross factory shipping weight is not available, of actual empty weight over five hundred pounds;

(2) for the permanent registration of travel trailers, thirty-three dollars ($33.00) plus three dollars fifty cents ($3.50) for each one hundred pounds or major fraction thereof of gross factory shipping weight over five hundred pounds or, if the gross factory shipping weight is not available, of actual empty weight over five hundred pounds; and

(3) for the re-registration of permanently registered travel trailers after sale or transfer, seven dollars ($7.00).

D. At the option of the owner of a fleet of fifty or more utility trailers wishing to register them in New Mexico, the division shall issue a registration and registration plate for each trailer in the fleet, the registration and registration plate to expire on the last day of the final month of a five-year period. Registrations and registration plates shall be issued for five years only if the owner of the trailers meets the following requirements:

(1) application is made on forms prescribed by the division and payment of the proper fee is made;

(2) upon the option of the director, presentation is made at the time of registration of a surety bond, certificate of deposit or of other financial security; and

(3) payment is made by the fleet owner of all registration fees due each year prior to the expiration date. If such fees are not paid, all registrations and registration plates in the fleet shall be canceled.

**History:** 1953 Comp., § 64-6-3, enacted by Laws 1978, ch. 35, § 338; 1979, ch. 370, § 1; 1999, ch. 227, § 3; 2003 (1st S.S.), ch. 3, § 13; 2007, ch. 319, § 50.

## ANNOTATIONS

**Cross references.** — For the definition of "freight trailer", *see* 66-1-4.6 NMSA 1978.

For the definition of "utility trailer", *see* 66-1-4.18 NMSA 1978.

**The 2007 amendment,** effective June 15, 2007, added a new Subsection A; added Subsection B to provide fees for utility trailers without reference to actual empty weight; added Paragraph (3) of Subsection B; and added Subsection C to provide fees for travel trailers.

**The 2003 (1st S.S.) amendment,** effective March 1, 2004, substituted "thirteen dollars ($13.00)" for "ten dollars ($10.00)" in Paragraph (1), "seven dollars ($7.00)" for "five dollars ($5.00)" in Paragraph (2), and "thirty-three dollars ($33.00)" for "twenty-five dollars ($25.00)" and "seven dollars ($7.00)" for "five dollars ($5.00)" near the middle and near the end of Paragraph (3) of Subsection A, and deleted "motor vehicle" preceding "division" in the first sentence of the introductory language and in Paragraph (1) of Subsection B.

**The 1999 amendment,** effective July 1, 1999, in the introductory language of Subsection A, deleted "the motor vehicle and motor transportation divisions, according to their appropriate jurisdictions, shall collect" following "utility trailers" and inserted "shall be collected"; in Paragraph A(1), inserted "or reregistration"; in Paragraph A(2), inserted "not permanently registered" and deleted the former last sentence which discussed the application of this section; added Paragraph A(3); in Subsection B, inserted "registration" preceding "plate" or "plates" in three instances, and made minor stylistic changes; and in Paragraph B(3), substituted "registration plates" for "license plates."

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 63 to 73.

60 C.J.S. Motor Vehicles §§ 136(1) to 145.

## 66-6-4. Registration fees; trucks, truck tractors, road tractors and buses.

A. Within their respective jurisdictions, the motor vehicle division and the motor transportation division of the department of public safety shall charge registration fees for trucks, truck tractors, road tractors and buses, except as otherwise provided by law, according to the schedule of Subsection B of this section.

| B. | Declared Gross Weight | Fee |
|---|---|---|
| | 001 to 4,000 | $40 |
| | 4,001 to 6,000 | 55 |
| | 6,001 to 8,000 | 69 |
| | 8,001 to 10,000 | 84 |
| | 10,001 to 12,000 | 99 |

| | |
|---|---|
| 12,001 to 14,000 | 113 |
| 14,001 to 16,000 | 128 |
| 16,001 to 18,000 | 143 |
| 18,001 to 20,000 | 157 |
| 20,001 to 22,000 | 172 |
| 22,001 to 24,000 | 187 |
| 24,001 to 26,000 | 201 |
| 26,001 to 48,000 | 118 |
| 48,001 and over | 172. |

C. All trucks whose declared gross weight or whose gross vehicle weight is less than twenty-six thousand pounds, after five years of registration, calculated from the date when the vehicle was first registered in this or another state, shall be charged registration fees at eighty percent of the rate set out in Subsection B of this section.

D. All trucks with a gross vehicle weight of more than twenty-six thousand pounds and all truck tractors and road tractors used to tow freight trailers shall be registered on the basis of gross combination vehicle weight.

E. All trucks with a gross vehicle weight of twenty-six thousand pounds or less shall be registered on the basis of gross vehicle weight. A trailer, semitrailer or pole trailer towed by a truck of such gross vehicle weight shall be classified as a utility trailer for registration purposes unless otherwise provided by law.

F. All farm vehicles having a declared gross weight of more than six thousand pounds shall be charged registration fees of two-thirds of the rate of the respective fees provided in this section and shall be issued distinctive registration plates. "Farm vehicle" means a vehicle owned by a person whose principal occupation is farming or ranching and which vehicle is used principally in the transportation of farm and ranch products to market and farm and ranch supplies and livestock from the place of purchase to farms and ranches in this state; provided that the vehicle is not used for hire.

G. In addition to other registration fees imposed by this section, beginning July 1, 1994, an annual tire recycling fee of one dollar fifty cents ($1.50) is imposed at the time of registration on each vehicle subject to a registration fee pursuant to this section, except for vehicles with a declared gross weight of greater than twenty-six thousand pounds upon which registration fees are imposed by Subsection B of this section.

H. Three percent of registration fees of trucks having from twenty-six thousand one pounds to forty-eight thousand pounds declared gross vehicle weight is to be transferred to the recycling and illegal dumping fund pursuant to the provisions of Section 66-6-23 NMSA 1978.

I. Three and seventy-five hundredths percent of registration fees of trucks in excess of forty-eight thousand pounds declared gross vehicle weight is to be transferred to the recycling and illegal dumping fund pursuant to the provisions of Section 66-6-23 NMSA 1978.

**History:** 1953 Comp., § 64-6-4, enacted by Laws 1978, ch. 35, § 339; 1987, ch. 347, § 19; 1994, ch. 117, § 20; 1994, ch. 126, § 20; 2003, ch. 270, § 3; 2003 (1st S.S.), ch. 3, § 14; 2007, ch. 319, § 51.

## ANNOTATIONS

**Cross references.** — For general definitions applicable to this section, *see* 66-1-4 to 66-1-4.20 NMSA 1978.

For the recycling and illegal dumping fund, *see* 74-13-19 NMSA 1978.

**The 2007 amendment,** effective June 15, 2007, changed "combination gross vehicle weight" to "gross combination vehicle weight" and changed the "tire recycling fund" to the "recycling and illegal dumping fund".

**The 2003 (1st S.S.) amendment,** effective March 1, 2004, increased each of the fees in Subsection B by approximately one-third, and substituted "a" for "any" preceding "vehicle owned" in the second sentence of Subsection F, "three" for "four" at the beginning of Subsection H, and "three and seventy-five hundredths" for "five" at the beginning of Subsection I.

**The 2003 amendment,** effective July 1, 2003, in Subsection A, inserted "division" following "motor vehicle" near the beginning, and substituted "division of the department of public safety" for "divisions" following "motor transportation" near the middle; substituted "one dollar fifty cents ($1.50)" for "one dollar ($1.00)" following "tire recycling fee of" near the middle of Subsection G; and deleted "a declared gross weight" following "trucks having" near the beginning of Subsection H.

**The 1994 amendment,** effective March 8, 1994, in Subsection B, in the column titled "Fees," substituted in the last two lines "88.50" and "129.50" for "85" and "123," respectively; and added Subsections G, H and I.

**Duplicate amendments.** — Laws 1994, ch. 117, § 20 and Laws 1994, ch. 126, § 20 enacted identical amendments to 66-6-4 NMSA 1978, effective March 8, 1994. The section was set out as amended by Laws 1994, ch. 126, § 20. *See* 12-1-8 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 63 to 73.

60 C.J.S. Motor Vehicles §§ 136 to 145.

## 66-6-5. Bus registration fees.

All buses shall pay the registration fees provided in Section 66-6-4 NMSA 1978, except for school buses and buses operated by religious or nonprofit charitable organizations for the express purpose of the organization for which the annual registration fee is seven dollars ($7.00). In addition to other registration fees imposed by this section, beginning July 1, 1994, there is imposed at the time of registration an annual tire recycling fee of fifty cents ($.50) per wheel that is in contact with the ground on each vehicle subject to a registration fee pursuant to this section.

**History:** 1953 Comp., § 64-6-5, enacted by Laws 1978, ch. 35, § 340; 1987, ch. 347, § 20; 1994, ch. 117, § 21; 1994, ch. 126, § 21; 2003, ch. 270, § 4; 2003 (1st S.S.), ch. 3, § 15.

**ANNOTATIONS**

**Cross references.** — For the definition of "bus", *see* 66-1-4.2 NMSA 1978.

For registration fee for bus carrying agricultural employees, *see* 66-6-8 NMSA 1978.

**The 2003 amendment,** effective July 1, 2003, substituted "fifty cents ($.50)" for "twenty-five cents ($.25)" following "tire recycling fee of" near the end of the section.

**The 2003 (1st S.S.) amendment,** effective March 1, 2004, substituted "seven dollars ($7.00)" for "five dollars ($5.00)" at the end of the first sentence.

**The 1994 amendment,** effective March 8, 1994, added the second sentence.

**Duplicate amendments.** — Laws 1994, ch. 117, § 21 and Laws 1994, ch. 126, § 21 enacted identical amendments to 66-6-5 NMSA 1978, effective March 8, 1994. The section was set out as amended by Laws 1994, ch. 126, § 21. *See* 12-1-8 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 63 to 73.

60 C.J.S. Motor Vehicles §§ 136(1) to 145.

## 66-6-6. Additional fees.

For the registration of any vehicle having solid tires the division shall charge the following additional fees:

A. all vehicles having solid rubber tires, twenty-five percent additional; and

B. all vehicles having solid tires of material other than rubber, one hundred percent additional.

**History:** 1953 Comp., § 64-6-6, enacted by Laws 1978, ch. 35, § 341.

## 66-6-6.1. Additional registration fee.

For registration of vehicles subject to the registration fees imposed by Sections 66-6-2 and 66-6-4 NMSA 1978, there is imposed an additional fee of two dollars ($2.00) for each twelve-month period for which a vehicle with a gross vehicle weight under twenty-six thousand pounds is registered. Amounts collected pursuant to this section are appropriated to the department and may be expended in fiscal year 2010 and subsequent fiscal years for the purposes of enforcing the provisions of the Mandatory Financial Responsibility Act [66-5-201 to 66-5-239 NMSA 1978] and for creating and maintaining a multilanguage noncommercial driver's license testing program. After those purposes are met, the balance of the registration fees collected pursuant to this section shall be used by the department to defray the costs of operating the motor vehicle division and for the purposes set forth in the provisions of Subsection F of Section 66-6-13 NMSA 1978. At the end of a fiscal year, unexpended and unencumbered balances of the amounts collected pursuant to this section shall not revert to the general fund.

**History:** 1978 Comp., § 66-6-6.1, enacted by Laws 2001, ch. 282, § 1; 2009, ch. 156, § 5.

**ANNOTATIONS**

**The 2009 amendment,** effective July 1, 2009, added the second, third and fourth sentences.

## 66-6-6.2. Registration fee; litter control and beautification fund.

In addition to all other fees collected by registration of vehicles pursuant to Section 66-3-1 NMSA 1978 or by registration of vehicles pursuant to the Motor Transportation Act [Chapter 65, Articles 1, 3 and 5 NMSA 1978], there is imposed on each registration, for each year covered by the registration, a beautification fee of fifty cents ($.50) to be deposited in the litter control and beautification fund.

**History:** Laws 2002, ch. 16, § 1.

**ANNOTATIONS**

**Emergency clauses.** — Laws 2002, ch. 16, § 5 contained an emergency clause and was approved March 4, 2002.

## 66-6-6.3. Save our children's sight fund option.

The vehicle registration form in use as of January 1, 2008 shall include a check-off option for a driver who wishes to contribute to the save our children's sight fund for a one-dollar ($1.00) or a five-dollar ($5.00) fee in addition to the registration fees required

by the division. All fees collected from the check-off option shall be paid to the state treasurer to the credit of the save our children's sight fund within two months of receipt.

**History:** Laws 2007, ch. 353, § 4 and Laws 2007, ch. 357, § 4.

**ANNOTATIONS**

**Duplicate laws.** — Laws 2007, ch. 353, § 4 and Laws 2007, ch. 357, § 4, both effective January 1, 2008, enacted identical new sections.

## 66-6-7. Exemptions.

A. Every person who, by the terms and provisions of Section 7-37-5 NMSA 1978, is entitled to a veteran exemption and who does not have sufficient real or personal property to claim the full exemption under that section may be eligible to pay motor vehicle registration fees at two-thirds the rates charged on vehicles which the veteran owns. The person claiming a reduced motor vehicle registration fee shall make an affidavit that in any claim of a veteran exemption thereafter during such year, he will set forth the amount of reductions so received which shall reduce the amount of benefits received from the real or personal property tax exemption to that extent. No person shall receive any reductions of registration fees in a greater sum during any one year than an amount equal to the property tax imposed on two thousand dollars ($2,000) of net taxable value of property in the school district in which he resides.

B. The director shall certify to the proper county assessor the amount of reduction received under the provisions of this section by any person, and the assessor shall note the reduction on his valuation records.

**History:** 1953 Comp., § 64-6-7, enacted by Laws 1978, ch. 35, § 342; 1983, ch. 331, § 1.

**ANNOTATIONS**

**Cross references.** — For definition of "director", *see* 66-1-4.4 NMSA 1978.

**When veteran received exemption.** — The only time a veteran was entitled to receive the benefits of Section 64-11-1.7, 1953 Comp. (similar to this section prior to 1983 amendment), was when he had not claimed his exemption on his real or personal property for the current year. 1964 Op. Att'y Gen. No. 64-107.

**Effect of exemption on property tax.** — If a veteran claimed his reduced motor vehicle registration fee, prior to claiming his exemption on real or personal property, he might have the tax liability for his real or personal property reduced by an amount equal to the difference between the amount of benefits he received as a result of his one-third tax exemption on motor vehicle registration fees and the amount of benefits he would

have received if he had first claimed his $2000 exemption on his real or personal property. 1964 Op. Att'y Gen. No. 64-107.

## 66-6-8. Bus registration; agricultural labor fees.

A. A bus that has a normal seating capacity of forty passengers or less and that is used exclusively for the transportation of agricultural laborers may be registered upon payment to the division of a fee of thirty-three dollars ($33.00).

B. In addition to the registration fee imposed by this section, there is imposed at the time of registration an annual tire recycling fee of fifty cents ($.50) per wheel that is in contact with the ground on each vehicle subject to a registration fee pursuant to this section.

C. Application for registration of a bus pursuant to this section shall be made in the form prescribed by the division and shall be accompanied by an affidavit that the bus will be used exclusively for the transportation of agricultural laborers. Upon registration, the bus is exempt from tariff-filing requirements of the public regulation commission.

**History:** 1953 Comp., § 64-6-8, enacted by Laws 1978, ch. 35, § 343; 1994, ch. 117, § 22; 1994, ch. 126, § 22; 2003, ch. 270, § 5; 2003 (1st S.S.), ch. 3, § 16.

**ANNOTATIONS**

**The 2003 amendment,** effective July 1, 2003, substituted "fifty cents ($.50)" for "twenty-five cents ($.25)" following "recycling fee of" near the middle of Subsection B; and substituted "public regulation" for "state corporation" preceding "commission" near the end of Subsection C.

**The 2003 (1st S.S.) amendment,** effective March 1, 2004, substituted "thirty-three dollars ($33.00)" for "twenty-five dollars ($25.00)" at the end of Subsection A, and "pursuant to" for "under" near the beginning of the first sentence of Subsection C.

**The 1994 amendment,** effective March 8, 1994, added Subsection B and redesignated former Subsection B as Subsection C.

**Duplicate amendments.** — Laws 1994, ch. 117, § 22 and Laws 1994, ch. 126, § 22 enacted identical amendments to 66-6-8 NMSA 1978, effective March 8, 1994. The section was set out as amended by Laws 1994, ch. 126, § 22. *See* 12-1-8 NMSA 1978.

## *66-6-8. Bus registration; agricultural labor fees. (Effective July 1, 2024.)*

*A. A bus that has a normal seating capacity of forty passengers or less and that is used exclusively for the transportation of agricultural laborers may be registered upon payment to the division of a fee of thirty-three dollars ($33.00).*

*B. In addition to the registration fee imposed by this section, there is imposed at the time of registration an annual tire recycling fee of fifty cents ($.50) per wheel that is in contact with the ground on each vehicle subject to a registration fee pursuant to this section.*

*C. Application for registration of a bus pursuant to this section shall be made in the form prescribed by the division and shall be accompanied by an affidavit that the bus will be used exclusively for the transportation of agricultural laborers. Upon registration, the bus is exempt from tariff-filing requirements of the department of transportation.*

***History:*** *1953 Comp., § 64-6-8, enacted by Laws 1978, ch. 35, § 343; 1994, ch. 117, § 22; 1994, ch. 126, § 22; 2003, ch. 270, § 5; 2003 (1st S.S.), ch. 3, § 16; 2023, ch. 100, § 77.*

***ANNOTATIONS***

***The 2023 amendment,*** *effective July 1, 2024, removed a reference to the public regulation commission due to the transfer of certain powers and duties to the department of transportation; and in Subsection C, after "of the", changed "public regulation commission" to "department of transportation".*

## 66-6-9. Fee for fertilizer trailers.

In lieu of the registration fee provided for in Section 66-6-3 NMSA 1978, the division shall collect a registration fee of seven dollars ($7.00) for each trailer used on the highways of this state by any commercial fertilizer company solely for the delivery or distribution of liquid fertilizer to a farmer; provided the trailer has an empty weight not in excess of three thousand five hundred pounds.

**History:** 1953 Comp., § 64-6-9, enacted by Laws 1978, ch. 35, § 344; 2003 (1st S.S.), ch. 3, § 17.

**ANNOTATIONS**

**The 2003 (1st S.S.) amendment,** effective March 1, 2004, substituted "seven dollars ($7.00)" for "five dollars ($5.00)" and "the" for "such" following "provided".

## 66-6-10. Registration fees for manufactured homes and travel trailers; division to notify county assessor of manufactured home registration.

A. For the registration of each manufactured home, the division shall collect a fee of seven dollars ($7.00).

B. The division shall compile and transmit to each county assessor each year a list of the manufactured homes that are registered with the division showing the assessor's county as the principal location of the manufactured home. The listing shall include all data pertinent to and necessary for the county assessor to value the manufactured homes in accordance with valuation rules promulgated by the property tax division pursuant to Section 7-36-26 NMSA 1978. The listing required by this subsection shall be transmitted no later than thirty days following the close of the annual registration process and shall be supplemented no less often than every thirty days to provide information to the appropriate county assessors on registrations occurring throughout the year.

C. At the time a person registers a manufactured home and pays the fee required by this section, the person shall be notified in writing by the division that the information required by Subsection B of this section will be furnished to the county assessor of the county of the principal location of the manufactured home and that the manufactured home is subject to property taxation under the Property Tax Code [Chapter 7, Articles 35 to 38 NMSA 1978].

**History:** 1953 Comp., § 64-6-10, enacted by Laws 1978, ch. 35, § 345; 1983, ch. 295, § 30; 2003 (1st S.S.), ch. 3, § 18.

**ANNOTATIONS**

**Cross references.** — For definition of "manufactured home", *see* 66-1-4.11 NMSA 1978.

**The 2003 (1st S.S.) amendment,** effective March 1, 2004, substituted "seven dollars ($7.00)" for "five dollars ($5.00)" in Subsection A, "the assessor's" for "his", in the first sentence and "rules" for "regulations", and "pursuant to" for "under" in the second sentence of Subsection B, and "a" for "his" preceding "manufactured home" and "the person" for "he" preceding "shall be notified", and inserted "of this section" following "Subsection B" in Subsection C.

**House trailers belonging to nonmilitary personnel** must bear current registration plates of this or another state regardless of intended use so long as they maintain their characteristic of being a mobile home. 1959 Op. Att'y Gen. No. 59-53.

**House trailers belonging to military.** — Nonresident military personnel, who do not register their house trailers in the states of which they are residents, must register them in New Mexico. 1965 Op. Att'y Gen. No. 65-131.

## 66-6-11. Computation of weight.

The weight for determining registration fees for all vehicles shall be the gross factory shipping weight, or if the gross factory shipping weight is unavailable, the actual empty

weight of the vehicle, except as otherwise provided by law for trucks, truck tractors, road tractors, buses, freight trailers, utility trailers and travel trailers.

**History:** 1953 Comp., § 64-6-11, enacted by Laws 1978, ch. 35, § 346; 2007, ch. 319, § 52.

**ANNOTATIONS**

**Cross references.** — For general definitions applicable to this section, *see* 66-1-4 to 66-1-4.20 NMSA 1978.

**The 2007 amendment,** effective June 15, 2007, provided a different measure of weight and that fees shall be based on gross factory shipping weight or actual empty weight except as otherwise provided by law.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 66.

60 C.J.S. Motor Vehicles § 138.

## 66-6-12. Fees for school buses.

A. Registration fees for school buses used solely for the purpose of transportation of school children and other school activities shall be seven dollars ($7.00) a year, except that the fee for a school bus permanently registered pursuant to Subsection A of Section 1 [66-3-30 MSA 1978] of this 2007 act is:

(1) for a school bus initially registered at the time an original certificate of title is issued for that school bus, a one-time fee of one hundred forty dollars ($140); or

(2) for a school bus permanently registered subsequent to the issuance of the original certificate of title for that school bus, a one-time fee of one hundred dollars ($100).

B. The application for registration of a school bus shall be accompanied by the certificate of the director of transportation of the public education department stating that the bus is used solely and exclusively as a school bus.

**History:** 1953 Comp., § 64-6-12, enacted by Laws 1978, ch. 35, § 347; 2003 (1st S.S.), ch. 3, § 19; 2007, ch. 116, § 2.

**ANNOTATIONS**

**The 2007 amendment,** effective July 1, 2007, prescribed registration fees for school buses permanently registered pursuant to Section 66-3-30 NMSA 1978.

**The 2003 (1st S.S.) amendment,** effective March 1, 2004, substituted "seven dollars ($7.00)" for "five dollars ($5.00)" in Subsection A and "public education department" for "state department of public education" in the first sentence and "no" for "a" at the beginning of the last sentence in Subsection B and inserted "not" following "shall", and deleted "as" following "considered" in the last sentence of that subsection.

## 66-6-13. Reduced fees for portion of year; fee incentive for registration by alternative means; temporary permits; drive-out permit; fee.

A. Upon a showing satisfactory to the division that a vehicle has not been operated on the highways of this state:

(1) prior to April 1 of the year in which registration is sought, the registration fee shall be three-fourths of the annual fee;

(2) prior to July 1 of the year in which registration is sought, the registration fee shall be one-half of the annual fee; and

(3) prior to October 1 of the year in which registration is sought, the registration fee shall be one-fourth of the annual fee.

B. Upon a showing satisfactory to the division that a nonresident who is the owner of a foreign vehicle is engaged in seasonal agricultural employment in the state, the division may issue a permit valid for thirty days upon payment of a temporary permit fee of one-tenth of the annual registration fee. This fee shall be in lieu of all other fees or taxes on the vehicle.

C. Upon a showing satisfactory to the division that an unlicensed vehicle has been purchased by a nonresident for transportation out of the state, the division may issue a two-day drive-out permit for a fee of five dollars ($5.00).

D. The provisions of Subsection A of this section shall not apply to house trailers, and the registration fees for house trailers shall be as provided in Sections 66-6-3 and 66-6-10 NMSA 1978 regardless of date of registration.

E. After the initial registration of a vehicle, if an owner of a vehicle renews the registration of the vehicle by internet or telephone, the registration fees shall be reduced by five percent. The secretary may establish by rule requirements for or limitations on renewal of registration by internet or telephone.

F. No later than January 31 of each year, the secretary shall determine the amount of the total reduction in registration fees that resulted from renewals by internet or telephone in the previous calendar year. The secretary may request approval from the department of finance and administration to transfer an amount no greater than that total reduction in registration fees determined by the secretary, by March 1 of each year

to the motor vehicle suspense fund from the balances in the department's nonreverting other state funds. The amount transferred is appropriated to the department for the purpose of distributing an amount of no more than the reduction in registration fees, as determined by the secretary, to the state road fund, municipalities and counties pursuant to Section 66-6-23.1 NMSA 1978.

**History:** 1953 Comp., § 64-6-13, enacted by Laws 1978, ch. 35, § 348; 2005, ch. 258, § 3; 2009, ch. 156, § 6.

**ANNOTATIONS**

**Cross references.** — For other temporary permits, *see* 66-3-6 NMSA 1978.

**The 2009 amendment,** effective July 1, 2009, in Subsection D, after "The provisions of", added "Subsection A of" and changed the references from Sections 64-63 and 64-6-10 NMSA 1978 to Sections 66-6-3 and 66-6-10 NMSA 1978; and added Subsections E and F.

**The 2005 amendment,** effective July 1, 2005, changed the fee from $5.00 to $7.00 in Subsection C; and in Subsection D, changed the statutory reference from Sections 64-6-3 and 64-6-10 NMSA 1978 to Sections 66-6-3 and 66-6-10 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 60 C.J.S. Motor Vehicles § 136(3).

## 66-6-14. Vehicles of United States and other states.

Vehicles or trailers owned by and used in the service of the United States or of any other state or political subdivision thereof, other than the state of New Mexico, need not be registered but must continually display plates or signs setting forth the fact that they are in the service of the United States or of such other state or political subdivision thereof.

**History:** 1953 Comp., § 64-6-14, enacted by Laws 1978, ch. 35, § 349.

**ANNOTATIONS**

**Official vehicles of Navajo tribal council** are vehicles within the meaning of this section and may be given license plates with a "U.S." prefix. 1956 Op. Att'y Gen. No. 56-6402.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 83.

60 C.J.S. Motor Vehicles § 136(3).

## 66-6-15. Vehicles of the state, county or municipality.

A. Vehicles or trailers owned by and used in the service of an Indian nation, tribe or pueblo located wholly or partly in this state or of any county or municipality of this state need not be registered but must continually display plates furnished by the division.

B. Vehicles on loan from dealers and used in an approved driver-training program by the public schools need not be registered but must continually display plates furnished by the division.

C. Each Indian nation, tribe or pueblo, each county and each municipality shall apply to the division for a plate for each vehicle or trailer in its service and shall provide identifying information concerning each vehicle or trailer for which a plate is applied.

D. The division shall issue plates for vehicles and trailers in the service of an Indian nation, tribe or pueblo located wholly or partly in this state or of any county or municipality of this state and keep a record of plates issued and plates returned. The plates shall be permanent and need not be renewed from year to year. The plates shall be numbered to identify the Indian nation, tribe or pueblo, the county or the municipality to which the plates are issued. The plates shall be the same size as registration plates issued to private vehicles but shall be different in color from the registration plates issued to private vehicles.

E. A vehicle or trailer owned by and used in the service of the state need not be registered with the division but must continually display a plate furnished by the transportation services division of the general services department. A state agency shall apply to the transportation services division of the general services department for a plate for each vehicle or trailer in its service, including identifying information for each vehicle or trailer. The transportation services division of the general services department shall issue plates for state agency vehicles and trailers and shall keep a record of plates issued and plates returned. These plates shall be:

(1) permanent and shall not be renewed from year to year;

(2) numbered to identify the state agency to which they are issued; and

(3) the same size as but a different color from registration plates issued to private vehicles or trailers or from plates issued pursuant to Subsection D of this section.

F. The division may issue to an Indian nation, tribe or pueblo located wholly or partly in this state or any county or municipality of this state or an entity not subject to registration pursuant to Section 66-6-14 NMSA 1978:

(1) an undercover license plate when it is determined by the division that the issuance of such a license plate is necessary to protect legitimate undercover law enforcement activities; or

(2) a protective license plate when it is determined by the division that the issuance of such a license plate is necessary to protect the health, safety or welfare of an employee using a vehicle owned by the Indian nation, tribe or pueblo or the county, municipality or entity for sensitive activities.

G. The standards for the issuance of a protective license plate pursuant to Paragraph (2) of Subsection F of this section shall be determined by rule jointly promulgated by the transportation services division of the general services department and the motor vehicle division of the taxation and revenue department.

H. As used in this section:

(1) "protective license plate" means a regular passenger license plate issued to an Indian nation, tribe or pueblo located wholly or partly in this state or a government entity that can be traced to that Indian nation, tribe or pueblo or government entity for a vehicle that is being used for sensitive activities;

(2) "sensitive activity" means an activity performed by an employee of an Indian nation, tribe or pueblo located wholly or partly in this state, of any county or municipality of this state or of an entity not subject to registration pursuant to Section 66-6-14 NMSA 1978, which activity:

(a) is authorized by the employee's employer to be performed for a legitimate and appropriate purpose for the employer, other than a legitimate undercover law enforcement purpose; and

(b) would place the employee at a higher risk of personal injury if knowledge of the activity were made public, as determined in writing by an appropriate supervising authority of the employee;

(3) "state agency" means a state department, agency, board or commission, including the legislative and judicial branches of government, but not including public schools and institutions of higher education; and

(4) "undercover license plate" means a regular passenger license plate issued to an Indian nation, tribe or pueblo located wholly or partly in this state or a government entity that is registered in a fictitious name and address that cannot be traced to that Indian nation, tribe or pueblo or the county, municipality or entity for a vehicle that is being used for legitimate law enforcement purposes only.

**History:** 1953 Comp., § 64-6-15, enacted by Laws 1978, ch. 35, § 350; 2001, ch. 111, § 1; 2007, ch. 29, § 10; 2013, ch. 66, § 3.

## ANNOTATIONS

**Cross references.** — For general definitions applicable to this section, *see* 66-1-4 to 66-1-4.20 NMSA 1978.

For driver training schools, *see* 66-10-1 NMSA 1978 et seq.

**The 2013 amendment,** effective June 14, 2013, authorized the issuance of protective and undercover license plates to Indian nations, tribes and pueblos located in New Mexico; defined terms related to protective and undercover license plates; and added Subsections F and G; in Subsection H, at the beginning of the introductory sentence, after "As used in", deleted "Subsection E of"; and added Paragraphs (1), (2) and (4) of Subsection H.

**The 2007 amendment,** effective July 1, 2007, in Subsection A, deleted vehicles owned by or used in the service of the state; in Subsection C, deleted the requirement that each state department or agency apply to the division for a plate; in Subsection D, deleted vehicles and trailers in the service of the state and deleted the requirement that plates identify the state department or agency to which the plates are issued; added Subsection E and Paragraphs (1) through (3) of Subsection E; and added Subsection F.

**The 2001 amendment,** effective April 2, 2001, changed the provisions of this section to include vehicles used by an Indian nation, tribe or pueblo located wholly or partly in New Mexico.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 83.

60 C.J.S. Motor Vehicles § 65.

## 66-6-16. Exemption for armed forces amputees and those who have lost use of limbs.

A person who is a bona fide resident of New Mexico, who served in the armed forces of the United States, who was honorably discharged and who suffered the loss or complete and total loss of use of one or both legs at or above the ankle or one or both arms at or above the wrist while so serving or from a service-connected cause shall be exempt from payment of any motor vehicle registration fees to the state on one vehicle a year owned by the person.

**History:** 1953 Comp., § 64-6-16, enacted by Laws 1978, ch. 35, § 351; 2007, ch. 319, § 53.

**ANNOTATIONS**

**The 2007 amendment,** effective June 15, 2007, eliminated the qualifying time periods and requires an honorable discharge.

**Conditions required for exemption.** — This section sets up three separate conditions which must be met by the claimant before he is entitled to an exemption from registration fees: (1) residency; (2) time of military service; and (3) the nature and result of the injury or disease. 1963 Op. Att'y Gen. No. 63-132.

## 66-6-17. Dealer plate fees.

A. Except as provided otherwise in Subsection C of this section, every dealer, except a dealer in motorcycles only, shall pay each license year fifty dollars ($50.00) for each dealer plate issued pursuant to Section 66-3-402 NMSA 1978 to the dealer for that license year.

B. Except as provided otherwise in Subsection C of this section, every dealer in motorcycles only shall pay each license year ten dollars ($10.00) for each dealer plate issued pursuant to Section 66-3-402 NMSA 1978 to the dealer for that license year.

C. In the event a dealer plate is lost, mutilated or becomes illegible, a dealer, including a dealer in motorcycles only, shall obtain a replacement plate pursuant to the provisions of Section 66-3-24 NMSA 1978. The fee for a replacement dealer plate shall be fifty dollars ($50.00) for a dealer or ten dollars ($10.00) for a dealer in motorcycles only.

**History:** 1953 Comp., § 64-6-17, enacted by Laws 1978, ch. 35, § 352; 1981, ch. 361, § 23; 1990, ch. 120, § 32; 1998, ch. 48, § 15; 2005, ch. 324, § 18; 2007, ch. 319, § 54.

**ANNOTATIONS**

**The 2007 amendment,** effective June 15, 2007, eliminated references to auto recycler and special dealer plates.

**The 2005 amendment,** effective January 1, 2006, changed "wrecker of vehicles" to "auto recycler".

**The 1998 amendment,** effective July 1, 1998, in the section heading, inserted "dealer", deleted "manufacturers, dealers and wreckers of vehicles"; in Subsection A, deleted "manufacturer" in two places, in Subsections A and B, substituted "the first" for "each", inserted "dealer" and "pursuant to Section 66-3-402 NMSA 1978"; in Subsection B, deleted "and shall pay five dollars ($5.00) for each additional plate so issued for the license year" and rewrote Subsection C.

**The 1990 amendment,** effective July 1, 1990, in Subsection A, added "except as provided otherwise in Subsection C of this section" at the beginning, inserted "each license year" following "shall pay", and substituted "in that license year" for "provided, however, that each such additional plate issued after June 30 of the licensing year shall be issued upon payment of five dollars ($5.00)" at the end; rewrote Subsection B which read "Every dealer in motorcycles only shall pay ten dollars ($10.00) for the first special

plate issued to him and shall pay five dollars ($5.00) for each additional plate so issued; deleted "Notwithstanding all other provisions of law" at the beginning of Subsection C; and made minor stylistic changes.

## 66-6-18. License fee for dealers, wholesalers, distributors, auto recyclers and title service companies.

For a license to do business as a dealer, wholesaler, distributor or any combination of the foregoing or as an auto recycler or as a title service company, there shall be paid a fee of fifty dollars ($50.00) for each license year or portion thereof.

**History:** 1953 Comp., § 64-6-18, enacted by Laws 1978, ch. 35, § 353; 1981, ch. 361, § 24; 1990, ch. 120, § 33; 1999, ch. 122, § 9; 2005, ch. 324, § 19.

**ANNOTATIONS**

**The 2005 amendment,** effective January 1, 2006, changed "wrecker of vehicles" to "auto recycler".

**The 1999 amendment,** effective July 1, 1999, in the section heading, inserted "of vehicles and title service companies"; and inserted "or as a title service company" near the middle of the section.

**The 1990 amendment,** effective July 1, 1990, rewrote the section which read "For a license to do business as a dealer, wholesaler, distributor or wrecker of vehicles or all four, there shall be paid a fee of fifty dollars ($50.00) annually. The fee for such licenses issued after June 30 of any year shall be thirty dollars ($30.00) for the remaining portion of the year".

## 66-6-19. Vehicle transaction fees.

A. For any transaction concerning the initial issuance, transfer or revocation of a title or registration, including filing and recording documents, releasing liens and certifying copies, the division shall charge three dollars ($3.00). As used in this subsection, "transaction" means all operations necessary at one time with respect to one vehicle, including the inspection required by Section 66-3-4 NMSA 1978.

B. No fee shall be charged by the division for the correction of documents or the issuance of documents in cases in which the division made errors in the original issuance of the documents.

**History:** 1953 Comp., § 64-6-19, enacted by Laws 1978, ch. 35, § 354; 2007, ch. 319, § 55.

**ANNOTATIONS**

**The 2007 amendment,** effective June 15, 2007, limited the $3.00 fee to the initial issuance, transfer or revocation of a title or registration.

## 66-6-20. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1999, ch. 49, § 9 repealed 66-6-20 NMSA 1978, as enacted by Laws 1978, ch. 35, § 355, relating to distribution of vehicle transaction fees, effective July 1, 1999. For provisions of former section, *see* the 1998 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* 66-6-23 NMSA 1978.

## 66-6-21. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1990, ch. 120, § 44 repealed 66-6-21 NMSA 1978, as enacted by Laws 1978, ch. 35, § 356, relating to former 66-6-20 NMSA 1978, controlling over all conflicting acts passed in the 1965 session of the legislature, effective July 1, 1990. For provisions of former section, *see* the 1989 NMSA 1978 on *NMOneSource.com.*

## 66-6-22. When fees returnable; refunds.

A. Whenever any application to the department is accompanied by any fee as required by the Motor Vehicle Code [66-1-1 NMSA 1978] or the Motor Transportation Act [Chapter 65, Articles 1, 3 and 5 NMSA 1978] and the application is refused or rejected, the fee shall be returned to the applicant.

B. Any person who believes that any amount paid by that person to the department under any provision of the Motor Vehicle Code or the Motor Transportation Act exceeded the amount due may claim a refund by directing to the secretary a written claim for refund in accordance with the procedures set out in Subsection A of Section 7-1-26 NMSA 1978. To be timely, any claim for refund pursuant to this subsection must be made within one year of the date the payment was made.

C. When the department has discovered that a class of people has overpaid by at least one dollar ($1.00) any tax, fee or penalty due under the Motor Vehicle Code or the Motor Transportation Act for the same or similar reasons and the members of the class are identifiable from the department's records, the department may refund the overpayment to all members of the class without the requirement that each person in the class submit a claim for refund.

D. Any refund made pursuant to this section may be made, at the discretion of the department, in the form of credit against future payments due under the Motor Vehicle Code or the Motor Transportation Act if future liabilities in an amount at least equal to the credit amount reasonably may be expected to become due.

**History:** 1953 Comp., § 64-6-22, enacted by Laws 1978, ch. 35, § 357; 1995, ch. 135, § 20.

**ANNOTATIONS**

**The 1995 amendment,** effective June 16, 1995, added "refunds" in the section heading; in Subsection A, substituted "department" for "division", substituted "the Motor Vehicle Code or the Motor Transportation Act" for "law", and made minor stylistic changes; rewrote Subsections B and C; and added Subsection D.

**When an applicant has erroneously registered his vehicle twice** and purchased two sets of license plates, he is, upon request, entitled to a refund for the second set issued. 1960 Op. Att'y Gen. No. 60-233.

**Intrastate operator becoming interstate not entitled to refund for overpayment.** — Where an intrastate operator purchases his licenses from the local license distributor in his locality and is seeking a refund if he subsequently becomes an interstate operator entitled to prorate the licenses of his fleet in the various states in which he operates, he is not entitled to obtain a refund from this state for any overpayment that he might have made on original registration as it applies to a subsequent proration program. 1961 Op. Att'y Gen. No. 61-76.

**Refunds made from 4% of fees collected.** — The refunds referred to in Section 64-11-11, 1953 Comp. (similar to this section), are a duty imposed upon the division by the law and thus should be made from the 4% of the fees collected. 1960 Op. Att'y Gen. No. 60-233.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 60 C.J.S. Motor Vehicles § 142.3.

## 66-6-22.1. Motor vehicle suspense fund created; receipts; disbursements.

A. There is created in the state treasury a fund to be known as the "motor vehicle suspense fund".

B. The fees collected under the provisions of Sections 66-1-1 through 66-6-19 NMSA 1978 shall be paid to the state treasurer for the credit of the motor vehicle suspense fund not later than the close of the second business day after their receipt, except as otherwise provided by the Off-Highway Motor Vehicle Act [66-3-1001 to 66-3-1020 NMSA 1978].

C. Money deposited to the credit of or disbursed from the motor vehicle suspense fund by the department shall be accounted for as provided by law, rule or procedure of the secretary of finance and administration.

D. The balance of the motor vehicle suspense fund is appropriated for the purpose of making refunds, distributions and other disbursements authorized or required by law to be made from the motor vehicle suspense fund, provided that no distribution shall be made to a municipality, county or fee agent operating a motor vehicle field office with respect to money collected and remitted to the department by that municipality, county or fee agent until the report of the municipality, county or fee agent is audited and accepted by the department.

**History:** 1978 Comp., § 66-6-22.1, enacted by Laws 1990, ch. 120, § 34; 1999, ch. 49, § 6; 2002, ch. 16, § 3; 2005, ch. 325, § 24; 2007, ch. 319, § 56.

**ANNOTATIONS**

**Cross references.** — For the motor vehicle suspense fund, *see* 66-6-22.1 NMSA 1978.

**The 2007 amendment,** effective June 15, 2007, eliminated the requirement that the department and financial administrator certify the appropriateness of disbursements from the motor vehicle suspense fund.

**The 2005 amendment,** effective January 1, 2006, provided in Subsection B that the fees shall be credited to the motor vehicle suspense fund not later than the close of the second business day after receipt except as provided in the Off-Highway Motor Vehicle Act.

**The 2002 amendment,** effective March 4, 2002, updated the internal section references in Subsection B, and substituted "rule" for "regulation" in the first sentence of Subsection C.

**The 1999 amendment,** effective July 1, 1999, updated statutory references in Subsection B.

## 66-6-22.2. Adjustments of disbursements from the motor vehicle suspense fund.

A. The provisions of this section apply to disbursements from the motor vehicle suspense fund.

B. If the secretary determines that a prior disbursement from the fund is erroneous, the secretary shall, pursuant to law, rules or procedures of the department of finance and administration, adjust future disbursements by the amount necessary to correct the error.

C. The secretary may, in lieu of recovering the entire erroneous amount from the next disbursement, recover an excess disbursement of one thousand dollars ($1,000) or more in installments from current and future disbursements pursuant to a written agreement whenever the amount of the disbursement decrease exceeds ten percent of

the average disbursement amount for that recipient for the twelve months preceding the month in which the secretary's determination is made; provided that, for the purposes of this subsection, the "average disbursement amount" shall be the arithmetic mean of the disbursement amounts within the twelve months immediately preceding the month in which the determination is made.

D. Except for the provisions of this section, if the amount by which a disbursement would be adjusted pursuant to Subsection B of this section is one thousand dollars ($1,000) or less, no adjustment shall be made.

E. In the event an adjustment authorized by this section requires a disbursement for which there is no equal offsetting receipt, the general fund disbursement shall be reduced by the difference between the offsetting receipt and the adjustment.

**History:** Laws 2007, ch. 319, § 57.

**ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 319 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

## 66-6-23. Disposition of fees.

A. After the necessary disbursements for refunds and other purposes have been made, the money remaining in the motor vehicle suspense fund, except for remittances received within the previous two months that are unidentified as to source or disposition, shall be distributed as follows:

(1) to each municipality, county or fee agent operating a motor vehicle field office:

(a) an amount equal to six dollars ($6.00) per driver's license and five dollars ($5.00) per identification card or motor vehicle or motorboat registration or title transaction performed;

(b) for each such agent determined by the secretary pursuant to Section 66-2-16 NMSA 1978 to have performed ten thousand or more transactions in the preceding fiscal year, other than a class A county with a population exceeding three hundred thousand or a municipality with a population exceeding three hundred thousand that has been designated as an agent pursuant to Section 66-2-14.1 NMSA 1978, an amount equal to one dollar ($1.00) in addition to the amount distributed pursuant to Subparagraph (a) of this paragraph for each driver's license, identification card, motor vehicle registration, motorboat registration or title transaction performed; and

(c) to each military installation designated as a fee agent pursuant to Section 66-2-14.1 NMSA 1978, an amount equal to one dollar fifty cents ($1.50) in addition to the amount distributed pursuant to Subparagraph (a) of this paragraph for each administrative service fee remitted by the military installation to the department pursuant to Subsection A of Section 66-2-16 NMSA 1978;

(2) to each municipality or county, other than a class A county with a population exceeding three hundred thousand or a municipality with a population exceeding three hundred thousand that has been designated as an agent pursuant to Section 66-2-14.1 NMSA 1978, operating a motor vehicle field office, an amount equal to one dollar fifty cents ($1.50) for each administrative service fee remitted by that county or municipality to the department pursuant to the provisions of Subsection A of Section 66-2-16 NMSA 1978;

(3) to the state road fund:

(a) an amount equal to the fees collected pursuant to Sections 66-7-413 and 66-7-413.4 NMSA 1978;

(b) an amount equal to the fee collected pursuant to Section 66-3-417 NMSA 1978;

(c) the remainder of each driver's license fee collected by the department employees from an applicant to whom a license is granted after deducting from the driver's license fee the amount of the distribution authorized in Paragraph (1) of this subsection with respect to that collected driver's license fee; and

(d) an amount equal to fifty percent of the fees collected pursuant to Section 66-6-19 NMSA 1978;

(4) to the local governments road fund, the amount of the fees collected pursuant to Subsection B of Section 66-5-33.1 NMSA 1978 and the remainder of the fees collected pursuant to Subsection A of Section 66-5-408 NMSA 1978;

(5) to the department:

(a) any amounts reimbursed to the department pursuant to Subsection D of Section 66-2-14.1 NMSA 1978;

(b) an amount equal to two dollars ($2.00) of each motorcycle registration fee collected pursuant to Section 66-6-1 NMSA 1978;

(c) an amount equal to the fees provided for in Subsection D of Section 66-2-7 NMSA 1978, Subsection E of Section 66-2-16 NMSA 1978, Subsections K and L of Section 66-3-6 NMSA 1978 other than the administrative fee, Subsection C of Section 66-5-44 NMSA 1978 and Subsection B of Section 66-5-408 NMSA 1978;

(d) the amounts due to the department for the manufacture and issuance of a special registration plate collected pursuant to the section of law authorizing the issuance of the specialty plate;

(e) an amount equal to the registration fees collected pursuant to Section 66-6-6.1 NMSA 1978 for the purposes of enforcing the provisions of the Mandatory Financial Responsibility Act [66-5-201 to 66-5-239 NMSA 1978] and for creating and maintaining a multilanguage noncommercial driver's license testing program; and after those purposes are met, the balance of the registration fees shall be distributed to the department to defray the costs of operating the division;

(f) an amount equal to fifty cents ($.50) for each administrative fee remitted to the department by a county or municipality operating a motor vehicle field office pursuant to Subsection A of Section 66-2-16 NMSA 1978;

(g) an amount equal to one dollar twenty-five cents ($1.25) for each administrative fee collected by the department or any of its agents other than a county or municipality operating a motor vehicle field office pursuant to Subsection A of Section 66-2-16 NMSA 1978; and

(h) an amount equal to the royalties or other consideration paid by commercial users of databases of motor vehicle-related records of the department pursuant to Subsection C of Section 14-3-15.1 NMSA 1978 for the purpose of defraying the costs of maintaining databases of motor vehicle-related records of the department; and after that purpose is met, the balance of the royalties and other consideration shall be distributed to the department to defray the costs of operating the division or for use pursuant to Subsection F of Section 66-6-13 NMSA 1978;

(6) to each New Mexico institution of higher education, an amount equal to that part of the fees distributed pursuant to Paragraph (2) of Subsection D of Section 66-3-416 NMSA 1978 proportionate to the number of special registration plates issued in the name of the institution to all such special registration plates issued in the name of all institutions;

(7) to the armed forces veterans license fund, the amount to be distributed pursuant to Paragraph (2) of Subsection E of Section 66-3-419 NMSA 1978;

(8) to the children's trust fund, the amount to be distributed pursuant to Paragraph (2) of Subsection D of Section 66-3-420 NMSA 1978;

(9) to the department of transportation, an amount equal to the fees collected pursuant to Section 66-5-35 NMSA 1978;

(10) to the state equalization guarantee distribution made annually pursuant to the general appropriation act, an amount equal to one hundred percent of the driver safety fee collected pursuant to Subsection D of Section 66-5-44 NMSA 1978;

(11) to the motorcycle training fund, seven dollars ($7.00) of each motorcycle registration fee collected pursuant to Section 66-6-1 NMSA 1978;

(12) to the recycling and illegal dumping fund:

(a) fifty cents ($.50) of the tire recycling fee collected pursuant to the provisions of Section 66-6-1 NMSA 1978;

(b) fifty cents ($.50) of each of the tire recycling fees collected pursuant to the provisions of Sections 66-6-2 and 66-6-4 NMSA 1978; and

(c) twenty-five cents ($.25) of each of the tire recycling fees collected pursuant to Sections 66-6-5 and 66-6-8 NMSA 1978;

(13) to the highway infrastructure fund:

(a) fifty cents ($.50) of the tire recycling fee collected pursuant to the provisions of Section 66-6-1 NMSA 1978;

(b) one dollar ($1.00) of each of the tire recycling fees collected pursuant to the provisions of Sections 66-6-2 and 66-6-4 NMSA 1978; and

(c) twenty-five cents ($.25) of each of the tire recycling fees collected pursuant to Sections 66-6-5 and 66-6-8 NMSA 1978;

(14) to each county, an amount equal to fifty percent of the fees collected pursuant to Section 66-6-19 NMSA 1978 multiplied by a fraction, the numerator of which is the total mileage of public roads maintained by the county and the denominator of which is the total mileage of public roads maintained by all counties in the state;

(15) to the litter control and beautification fund, an amount equal to the fees collected pursuant to Section 66-6-6.2 NMSA 1978;

(16) to the local government division of the department of finance and administration, an amount equal to the fees collected pursuant to Section 66-3-424.3 NMSA 1978 for distribution to each county to support animal control spaying and neutering programs in an amount proportionate to the number of residents of that county who have purchased pet care special registration plates pursuant to Section 66-3-424.3 NMSA 1978; and

(17) to the Cumbres and Toltec scenic railroad commission, twenty-five dollars ($25.00) collected pursuant to the Cumbres and Toltec scenic railroad special registration plate.

B. The balance, exclusive of unidentified remittances, shall be distributed in accordance with Section 66-6-23.1 NMSA 1978.

C. If any of the paragraphs, subsections or sections referred to in Subsection A of this section are recompiled or otherwise redesignated without a corresponding change to Subsection A of this section, the reference in Subsection A of this section shall be construed to be the recompiled or redesignated paragraph, subsection or section.

**History:** 1953 Comp., § 64-6-23, enacted by Laws 1978, ch. 35, § 358; 1985, ch. 41, § 1; 1985 (1st S.S.), ch. 15, § 20; 1986, ch. 20, § 123; 1987, ch. 347, § 21; 1988, ch. 106, § 2; 1989, ch. 318, § 19; 1990, ch. 120, § 35; 1991, ch. 67, § 1; 1993, ch. 68, § 43; 1993, ch. 304, § 1; 1993, ch. 361, § 2; 1994, ch. 117, § 23; 1994, ch. 126, § 23; 1995, ch. 6, § 13; 1997, ch. 204, § 1; 1999, ch. 49, § 7; 1999 (1st S.S.), ch. 9, § 2; 2001, ch. 20, § 1; 2001, ch. 282, § 2; 2002, ch. 16, § 4; 2003, ch. 175, § 3; 2003, ch. 197, § 3; 2003, ch. 198, § 3; 2003, ch. 201, § 3; 2003, ch. 270, § 6; 2004, ch. 59, § 22; 2005, ch. 20, § 3; 2005, ch. 171, § 21; 2007, ch. 136, § 2; 2009, ch. 156, § 7; 2012, ch. 47, § 2; 2023, ch. 126, § 2.

## ANNOTATIONS

**Cross references.** — For the general fund, *see* 6-4-2 NMSA 1978.

For the local governments road fund, *see* 67-3-28.2 NMSA 1978.

For the highway infrastructure fund, *see* 67-3-59.2 NMSA 1978.

For the state road fund, *see* 67-3-65 NMSA 1978.

For the litter control and beautification fund, *see* 67-16-14 NMSA 1978.

**The 2023 amendment,** effective July 1, 2023, increased the distribution from the motor vehicle suspense fund to the motorcycle training fund; and in Subsection A, Paragraph A(11), after "training fund", deleted "two dollars ($2.00)" and added "seven dollars ($7.00)".

**The 2012 amendment,** effective July 1, 2012, provided for a distribution to military installations that are designated as a fee agent and in Subsection A, in Paragraph (1), added Subparagraph (c).

**The 2009 amendment,** effective July 1, 2009, in Subparagraph (c) of Paragraph (5) of Subsection A, after "Section 66-2-16 NMSA 1978, Subsectons", changed "J and K" to "K and L"; in Subparagraph (h) of Paragraph (5) of Subsection A, after "motor vehicle division", added the remainder of the sentence.

**The 2007 amendment,** effective July 1, 2008, provided for the distribution of $25 to the Cumbres and Toltec scenic railroad commission.

**The 2005 amendment,** effective June 17, 2005, changed "tire recycling fund" to "recycling and illegal dumping fund" in Subsection A(12).

Laws 2005, ch. 20, § 3, effective July 1, 2005, also amended 66-6-23 NMSA 1978. The section was set out as amended by Laws 2005, ch. 171, § 21. *See* 12-1-8 NMSA 1978 this

**The 2004 amendment,** effective March 4, 2004, amended Subsection A by deleting the references in Subparagraph (d) of Paragraph (5) to Sections 66-3-419 and 66-3-422 and insert in their place: "for the manufacture and issuance of a special registration plate collected pursuant to the section of law authorizing the issuance of the specialty plate" and to change the name of the "state highway and transportation department" to "department of transportation" in Paragraph (9) and add Paragraph (16). Laws 2004, ch. 58, § 23 makes the 2004 amendment of this section applicable for the distribution of fees collected on or after April 1, 2004.

**2003 amendments.** — Laws 2003, ch. 270, § 6, effective July 1, 2003, adding Paragraph A(12), redesignating the subsequent paragraphs accordingly, and rewriting Paragraph A(13), and A(14) to be present Paragraphs A(14) and A(15), was approved April 8, 2003. This section was also amended by four other acts. Laws 2003, ch. 175, § 3, effective January 1, 2004, amending the section by adding a Paragraph A(15), disbursing fees to the land government division of the department of finance and administration, was approved April 6, 2003. Laws 2003, ch. 197, § 3, effective January 1, 2004, amending this section by adding "and Paragraph (1) of Subsection D of Section 66-3-424.1 NMSA 1978" near the end of Subparagraph A(5)(d), was approved April 6, 2003. Laws 2003, ch. 198, § 3 and Laws 2003, ch. 201, § 3, both effective January 1, 2004, and both amending the section by adding "and Paragraph (2) of Subsection D of Section 66-3-424.1 NMSA 1978" near the end of Subparagraph A(5)(d), were approved April 6, 2003. This section was set out as amended by Laws 2003, Ch. 270, § 6. See 12-1-8 NMSA 1978.

**The 2002 amendment,** effective March 4, 2002, added Paragraph A(3)(a), and redesignated the remaining text of Paragraph A(3) as Paragraphs A(3)(b), A(3)(c), and A(3)(d); and updated the internal section reference in Paragraph A(14).

**The 2001 amendment,** effective July 1, 2001, inserted Subparagraph A(3)(a) and redesignated the remaining subparagraphs accordingly; and added Paragraph A(5)(e)

**Laws 2001, ch. 20, § 1** also amended 66-6-23 NMSA 1978. The section was set out as amended by Laws 2001, ch. 282, § 2. *See* 12-1-8 NMSA 1978.

**The 1999 amendment,** by Laws 1999 (1st S.S.), ch. 9, § 2, effective July 1, 1999, in Subsection A, in Subparagraph (5)(c), deleted "Subsection C of Section 66-3-16 NMSA 1978" following "administrative fee", in Paragraph (12) substituted "highway infrastructure fund" for "rubberized asphalt fund, forty-five percent of", deleted former Paragraph (13), relating to distributions to the tire recycling fund, and redesignated the subsequent paragraphs accordingly.

**The 1997 amendment,** effective July 1, 1997, in Subsection A, inserted "or motor vehicle or motorboat" near the end of Paragraph (1) and inserted "from all" preceding "annual tire recycling" in Paragraph (8).

**The 1995 amendment,** effective July 1, 1995, substituted "local governments road fund" for "general fund" in Paragraph A(4) and made minor stylistic changes.

**The 1994 amendment,** effective March 8, 1994, substituted "pursuant to" for "under" in Paragraph A(2); substituted "authorized in" for "under" in Subparagraph A(3)(b); in Paragraph A(7), substituted "recycling" for "disposal" and substituted "66-6-1, 66-6-2, 66-6-4, 66-6-5 and 66-6-8" for "66-1-1 through 66-6-5, 66-6-8 and 66-6-9"; in Paragraph A(8), substituted "recycling" for "disposal" twice and substituted ", 66-6-2, 66-6-4, 66-6-5 and 66-6-8" for "through 66-6-5, 66-6-8 and 66-6-9"; in Subsection E, substituted "by April 1 of every year" for "by May 1, 1988, and by April 1 of every year thereafter" twice, and deleted "After August 1, 1988" from the beginning of the last sentence; in Subsection F, substituted "by April 1 of every year" for "by May 1, 1988, and by April 1 of every year thereafter," and substituted "that" for "which" preceding "have certified mileages"; and substituted "secretary" for "director" in Subsection G.

**Duplicate amendments.** — Laws 1994, ch. 117, § 18 and Laws 1994, ch.126, § 18 enacted identical amendments to 66-6-23 NMSA 1978. The section was set out as amended by Laws 1994, ch. 126, § 18. *See* 12-1-8 NMSA 1978.

**The 1993 amendment,** effective July 1, 1993, in Subsection A, Paragraph (1) , substituted "six dollars ($6.00)" for "five dollars ($5.00)" and "three dollars ($3.00)" for "two dollars ($2.00)"; in Paragraph (2), inserted "with a population in excess of three hundred thousand" and substituted "three hundred thousand" for "two hundred thousand"; Paragraph (5), added present Subparagraph (b), redesignated former Subparagraph (b) as Subparagraph (c), and added Paragraphs (6) through (8), making related grammatical changes.

Laws 1993, ch. 68, § 43 also amended 66-6-23 NMSA 1978. The section was set out as amended by Laws 1993, ch. 361, § 2. *See* 12-1-8 NMSA 1978.

**The 1991 amendment,** effective July 1, 1991, in Subsection A, inserted "five dollars ($5.00) per driver's license and" and deleted "driver's license" preceding "registration" in Paragraph (1) and substituted "Subsection B" for "Subsection C" in Subparagraph (b) of Paragraph (5); and substituted "Subsection E" for "Subsection C" in the first sentence in Paragraph (3) of Subsection B.

**The 1990 amendment,** effective July 1, 1990, substituted "department" for "division" throughout the section; in Subsection A, deleted the first sentence which read "The fees collected under the provisions of Sections 66-1-1 through 66-6-18 NMSA 1978 shall be paid to the state treasurer not later than the close of the second business day after their receipt" and substituted the present second sentence and Paragraphs (1) to (5) for a sentence which read "From this amount each municipality, county or fee agent

operating a motor vehicle field office shall be paid two dollars ($2.00) per identification card, driver's license, registration or title transaction performed, and designated the portion of former Subsection A beginning with "The balance" as present Subsection B; redesignated former Subsections B to F as present Subsections C to G; in the first paragraph of present Subsection B, inserted "exclusive of unidentified remittances", substituted "the distributions required by Subsection A of this section" for "amounts otherwise distributed or transferred pursuant to Sections 66-5-44, 66-5-46, 66-5-47 and 66-5-408 NMSA 1978" and "last day of the month" for "tenth day of the month" in the third sentence of Paragraph (3) of present Subsection B, inserted "by April 1 of each year" following "shall certify", and substituted "April 1 of that year" for "January 1 of each odd-numbered year"; substituted "that municipality, county or fee agent" for "that office" in present Subsection G; and made related and minor stylistic changes throughout the section.

**The 1989 amendment,** effective July 1, 1989, in Subsection A substituted "two dollars ($2.00)" for "one dollar fifty cents ($1.50)" near the middle of the second sentence, and inserted "driver's license" near the end of that sentence; and added Subsection F.

**The 1988 amendment,** effective May 18, 1988, in Subsection A(3), substituted "secretary of highway and transportation" for "chief highway administrator" in the first and third sentences and "state highway and transportation department" for "state highway department" in the last sentence; deleted former Subsection B(2), regarding determination and certification of proportions required to be determined; redesignated former Subsection B(3) as present Subsection B(2); and added Subsections D and E.

**Funds used for road plan if another municipal body does plan.** — Funds designated by law for road improvement and maintenance purposes may be used for the preparation of a road plan if the planning is to be performed by another municipal body upon a reimbursable basis. 1959 Op. Att'y Gen. No. 59-121.

**"Maintenance".** — The term "maintenance" in Section 64-11-12B(2), 1953 Comp. (similar to Subsection A(3) of this section), is not limited to any specific means. 1963 Op. Att'y Gen. No. 63-62.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 73.

60 C.J.S. Motor Vehicles §§ 143 to 145.

## 66-6-23.1. Formulaic distribution.

A. The balance from Section 66-6-23 NMSA 1978 shall be transferred or distributed by the state treasurer on or before the last day of the month next after its receipt, as follows:

(1) seventy-four and sixty-five hundredths percent shall be distributed to the state road fund;

(2) seven and six-tenths percent shall be transferred to each county in the proportion, determined by the department in accordance with Subsection B of this section, that the registration fees for vehicles in that county are to the total registration fees for vehicles in all counties;

(3) seven and six-tenths percent shall be transferred to the counties, with each county receiving an amount equal to the proportion, determined by the secretary of transportation in accordance with Subsection D of this section, that the mileage of public roads maintained by the county is to the total mileage of public roads maintained by all counties of the state. Amounts distributed to each county in accordance with this paragraph shall be credited to the respective county road fund and be used for the improvement and maintenance of the public roads in the county and to pay for the acquisition of rights of way and material pits. For this purpose, the board of county commissioners of each of the respective counties shall certify by April 1 of each year to the secretary of transportation the total mileage as of April 1 of that year; provided that in their report, the boards of county commissioners shall identify each of the public roads maintained by them by name, route and location. By agreement and in cooperation with the department of transportation, the boards of county commissioners of the various counties may use or designate any of the funds provided in this paragraph for a federal aid program;

(4) four and six-hundredths percent shall be allocated among the counties in the proportion, determined by the department in accordance with Subsection B of this section, that the registration fees for vehicles in that county are to the total registration fees for vehicles in all counties. The amount allocated to each county shall be transferred to the incorporated municipalities within the county in the proportion, determined by the department of finance and administration in accordance with Subsection C of this section, that the sum of net taxable value, as that term is defined in the Property Tax Code [Chapter 7, Articles 35 to 38 NMSA 1978], plus the assessed value, as that term is used in the Oil and Gas Ad Valorem Production Tax Act [Chapter 7, Article 32 NMSA 1978] and in the Oil and Gas Production Equipment Ad Valorem Tax Act [Chapter 7, Article 34 NMSA 1978], determined for the incorporated municipality is to the sum of net taxable value plus assessed value determined for all incorporated municipalities within the county. Amounts transferred to incorporated municipalities pursuant to the provisions of this paragraph shall be used for the construction, maintenance and repair of streets within the municipality and for payment of paving assessments against property owned by federal, county or municipal governments. In a county in which there are no incorporated municipalities, the amount allocated pursuant to this paragraph shall be transferred to the county government road fund and used in accordance with the provisions of Paragraph (3) of this subsection; and

(5) six and nine-hundredths percent shall be allocated among the counties in the proportion, determined by the department of finance and administration in accordance with Subsection C of this section, that the registration fees for vehicles in that county are to the total registration fees for vehicles in all counties. The amount allocated to each county shall be transferred to the county and incorporated municipalities within the county in the proportion, determined by the department of finance and administration in accordance with Subsection B of this section, that the computed taxes due for the county and each incorporated municipality within the county bear to the total computed taxes due for the county and incorporated municipalities within the county. For the purposes of this paragraph, the term "computed taxes due" for a jurisdiction means the sum of the net taxable value, as that term is defined in the Property Tax Code, plus the assessed value, as that term is used in the Oil and Gas Ad Valorem Production Tax Act and in the Oil and Gas Production Equipment Ad Valorem Tax Act, for that jurisdiction multiplied by an average of the rates for residential and nonresidential property imposed for that jurisdiction pursuant to Subsection B of Section 7-37-7 NMSA 1978.

B. To carry out the provisions of this section, during the month of June of each year:

(1) the department shall determine and certify to the department of finance and administration the proportions that the department is required to determine pursuant to Subsection A of this section using information for the preceding calendar year on the number of vehicles registered in each county based on the address of the owner or place where the vehicle is principally located, the registration fees for the vehicles registered in each county, the total number of vehicles registered in the state and the total registration fees for all vehicles registered in the state; and

(2) the department of finance and administration shall determine the proportions that the department of finance and administration is required to determine pursuant to this subsection based upon the net taxable value, as that term is defined in the Property Tax Code, and the assessed value, as that term is used in the Oil and Gas Ad Valorem Production Tax Act and the Oil and Gas Production Equipment Ad Valorem Tax Act, for the preceding tax year and the tax rates imposed pursuant to Subsection B of Section 7-37-7 NMSA 1978 in the preceding September.

C. By June 30 of each year, the department of finance and administration shall determine the appropriate percentage of money to be transferred to each county and municipality for each purpose in accordance with Subsection A of this section based upon the proportions determined by or certified to the department of finance and administration. The percentages determined shall be used to compute the amounts to be transferred to the counties and municipalities during the succeeding fiscal year.

D. The board of county commissioners of each of the respective counties shall, by April 1 of every year, certify reports to the secretary of transportation of the total mileage of public roads maintained by each county as of April 1 of every year; provided that in their reports, the boards of county commissioners shall identify each of the public roads

maintained by them by name, route and location. By July 1 of every year, the secretary of transportation shall verify the reports of the counties and revise, if necessary, the total mileage of public roads maintained by each county. The mileage verified by the secretary of transportation shall be the official mileage of public roads maintained by each county. Distribution of amounts to a county for road purposes shall be made in accordance with this section.

E. If a county has not made the required mileage certification pursuant to Section 67-3-28.3 NMSA 1978 by April 1 of any year, the secretary of transportation shall estimate the mileage maintained by those counties for the purpose of making distribution to all counties, and the amount calculated to be distributed each month to those counties not certifying mileage shall be reduced by one-third each month for that fiscal year, and that amount not distributed to those counties shall be distributed equally to all counties that have certified mileages.

**History:** 1978 Comp., § 66-6-23.1, enacted by Laws 1999, ch. 49, § 8; 2003 (1st S.S.), ch. 3, § 20.

**ANNOTATIONS**

**The 2003 (1st S.S.) amendment,** effective March 1, 2004, in Subsection A, changed the percentages set out at the beginning of Paragraphs (1) through (5) from their former values of 66.541%, 10.032%, 10.032%, 5.358%, and 8.037% respectively, deleted "highway and" following "secretary of" in the first and third sentences and substituted "department of transportation" for "state highway and transportation department" and "a" for "any" preceding "federal" in the last sentence of Paragraph (3), substituted "a" for "any" preceding "county" and inserted "government" preceding "road fund" in the last sentence of Paragraph (4), and substituted "a" for "any" preceding "jurisdiction" near the beginning of the last sentence of Paragraph (5), substituted "that" for "which" following "proportions" near the beginning of Paragraph (1) and "this subsection" for "Subsection B of this section" near the beginning of Paragraph (2) of Subsection B, deleted "highway and" following "secretary of" in the first three sentences and substituted "a" for "any" preceding "county" in the last sentence of Subsection D, and deleted "highway and" following "secretary of" near the beginning of Subsection E.

## 66-6-24. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1989, ch. 85, § 1 repealed 66-6-24 NMSA 1978, as enacted by Laws 1978, ch. 35, § 359, relating to state road suspense fund, effective June 16, 1989.

## 66-6-25. Registration by county or municipality prohibited.

A. No county or municipality shall require registration or charge fees for any vehicle subject to registration under the Motor Vehicle Code [66-1-1 NMSA 1978].

B. Notwithstanding the provisions of Subsection A of this section, a county or municipality designated as an agent pursuant to Section 66-2-14.1 NMSA 1978 may impose a fee in an amount not to exceed five dollars ($5.00) per year in addition to any other registration fee required. This fee shall not be imposed if the county or municipality has imposed a gasoline tax pursuant to the County and Municipal Gasoline Tax Act [Chapter 7, Article 24A NMSA 1978], the proceeds of which are used to fund a vehicle emission inspection program. Any money collected as a result of the imposition of an additional fee pursuant to this subsection shall be used only to fund a vehicle emission inspection program.

**History:** 1953 Comp., § 64-6-25, enacted by Laws 1978, ch. 35, § 360; 1985, ch. 95, § 5.

**ANNOTATIONS**

**Motor vehicle inspection fee not valid exercise** of localities' home rule power. *Chapman v. Luna*, 1984-NMSC-029, 101 N.M. 59, 678 P.2d 687, cert. denied, 474 U.S. 947, 106 S. Ct. 345, 88 L. Ed. 2d 292 (1985).

**Local emissions testing fee prohibited.** — Where a city and county impose a fee to defray the administrative costs of vehicle emissions testing, such a fee is invalid because this section prohibits any fee regardless of the purpose. *Chapman v. Luna*, 1984-NMSC-029, 101 N.M. 59, 678 P.2d 687, cert. denied, 474 U.S. 947, 106 S. Ct. 345, 88 L. Ed. 2d 292 (1985).

## 66-6-25.1. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 95, § 7 repealed 66-6-25.1, as enacted by Laws 1984 (1st S.S.), ch. 9, § 3, relating to the prohibition of certain emission control fees, effective April 2, 1985. For present comparable provisions, *see* 74-2-4E NMSA 1978.

## 66-6-26. Registered vehicle exempt from property tax; exception.

No vehicle upon which the registration fees provided for in the Motor Vehicle Code [66-1-1 NMSA 1978] have been paid shall be assessed or taxed upon any property assessment rolls in this state for the period for which the fees are paid, except that mobile homes shall be subject to assessment and property tax in addition to the vehicle registration fee.

**History:** 1953 Comp., § 64-6-26, enacted by Laws 1978, ch. 35, § 361.

**ANNOTATIONS**

**If equipment integral part of trailer both are exempt.** — Evidence that certain equipment was bolted to taxpayer's trailer, that the trailer had no use apart from the equipment, that the equipment was an integral part of the trailer, and that the trailer and equipment constituted a single unit and was used as such, showed the equipment was a part of the trailer, and once the permanent registration on the trailer was paid, both trailer and equipment were exempt from property tax under Section 64-11-14, 1953 Comp. (similar to this section). *Halliburton Co. v. Property Appraisal Dep't*, 1975-NMCA-123, 88 N.M. 476, 542 P.2d 56.

**Equipment on trailer was included in gross weight.** — Since the registration fees for trucks are determined by declared gross weight, and since a gross weight was declared by taxpayer which included the equipment mounted on his vehicles, and registration fees were paid on that gross weight as provided in the motor vehicle code, the equipment mounted on the trucks was exempt from property tax under 64-11-14, 1953 Comp. (similar to this section). *Halliburton Co. v. Property Appraisal Dep't*, 1975-NMCA-123, 88 N.M. 476, 542 P.2d 56.

**Military personnel's trailers owned as personal property exempt.** — Trailers owned by military personnel as personal property and not being motor vehicles are free from taxation under the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940, § 514 (now the Servicemembers Civil Relief Act 50 U.S.C. App. § 5714) except by the state of domicile of the owner. It is possible that the vehicle could become real property so as to be taxable as such without regard to the Soldiers' and Sailors' Civil Relief Act. The provisions of Section 64-11-14, 1953 Comp. (similar to this section), contemplate this possibility, permitting ad valorem taxes to be assessed when a trailer has had its wheels removed and been placed on a permanent foundation. 1959 Op. Att'y Gen. No. 59-53.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Taxation, as real estate, of trailers or mobile homes, 7 A.L.R.4th 1016.

## 66-6-27 to 66-6-29. Repealed.

### ANNOTATIONS

**Repeals.** — Laws 1988, ch. 73, § 56 repealed 66-6-27 to 66-6-29 NMSA 1978, as enacted by Laws 1978, ch. 35, §§ 362 to 364, relating to excise tax on issuance of certificates of title, use fees for vehicles weighing in excess of 26,000 pounds, and bond requirements for operators required to pay such use fees, effective July 1, 1988.

## 66-6-30. Recompiled.

### ANNOTATIONS

**Recompilations.** — Laws 1988, ch. 73, § 36, recompiled 66-6-30 NMSA 1978 as 7-15A-9 NMSA 1978, effective July 1, 1988.

## 66-6-31 to 66-6-33. Repealed.

### ANNOTATIONS

**Repeals.** — Laws 1988, ch. 73, § 56 repealed 66-6-31 to 66-6-33 NMSA 1978, as enacted by Laws 1978, ch. 35, §§ 366 to 368, relating to distribution of revenue from use fee and penalty and lien for nonpayment of use fee, effective July 1, 1988.

## 66-6-34. Recompiled.

### ANNOTATIONS

**Recompilations.** — Laws 1995, ch. 135, § 28 recompiled 66-6-34 NMSA 1978, relating to the penalty for dishonored check, as 66-8-141 NMSA 1978, effective June 16, 1995.

## 66-6-35. Repealed.

### ANNOTATIONS

**Repeals.** — Laws 1991, ch. 160, § 22 repealed 66-6-35 NMSA 1978, as enacted by Laws 1978, ch. 35, § 370, relating to written agreement by the motor vehicle division with the taxation and revenue department, effective July 1, 1991. For provisions of former section, *see* the 1990 NMSA 1978 on *NMOneSource.com.*

## 66-6-36. Payment in foreign currency.

To the extent permitted by the laws of the United States and by treaties entered into by the United States, the secretary may require all amounts due under the Motor Vehicle Code [66-1-1 NMSA 1978] or the Motor Transportation Act [Chapter 65, Articles 1, 3 and 5 NMSA 1978] to be paid in currency of the United States. To the extent the secretary permits or is required to permit payment of amounts due under the Motor Vehicle Code or the Motor Transportation Act to be made in foreign currency, the secretary after consultation with the secretary of finance and administration shall establish a procedure for selecting an appropriate exchange rate to be used in determining the amount due expressed in the foreign currency. The secretary may require, as a condition for accepting payment in a foreign currency, that any cost incurred or to be incurred by the department in converting the currency be added to the amount due. Amounts received by the department to defray the cost of converting currency are appropriated to the department for that purpose.

**History:** 1978 Comp., § 66-6-36, enacted by Laws 1995, ch. 135, § 21.

# ARTICLE 7
# Traffic Laws; Signs, Signals and Markings; Accidents; Weight and Size; Traffic Safety

# PART 1
# APPLICATION OF TRAFFIC LAWS

## 66-7-1. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1990, ch. 120, § 45 repealed 66-7-1 NMSA 1978, as amended by Laws 1989, ch. 318, § 21, relating to definitions for traffic regulation, effective July 1, 1990. For provisions of former section, *see* the 1989 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* 66-1-4.1 to 66-1-4.20 NMSA 1978.

## 66-7-2. Reference to vehicles upon the highways; exceptions.

A. The provisions of Chapter 66, Article 7 NMSA 1978 relating to the operation of vehicles refer exclusively to the operation of vehicles upon highways, except where a different place is specifically referred to in a given section.

B. The provisions of Sections 66-7-201 through 66-7-215, 66-7-352.5, 66-8-102 and 66-8-113 NMSA 1978 apply upon highways and elsewhere throughout the state.

**History:** 1953 Comp., § 64-7-2, enacted by Laws 1978, ch. 35, § 372; 2001, ch. 124, § 1.

**ANNOTATIONS**

**The 2001 amendment,** effective June 15, 2001, inserted "66-7-352.5" in Subsection B and updated the internal references throughout the section.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 1, 2, 11, 204 to 206, 266.

60 C.J.S. Motor Vehicles §§ 1 to 8, 16, 20.

## 66-7-3. Required obedience to traffic laws.

It is unlawful and, unless otherwise declared in the Motor Vehicle Code [66-1-1 NMSA 1978] with respect to particular offenses, it is a misdemeanor for any person to

do any act forbidden or fail to perform any act required in Article 7 of Chapter 66 NMSA 1978.

**History:** 1953 Comp., § 64-7-3, enacted by Laws 1978, ch. 35, § 373.

**ANNOTATIONS**

**Cross references.** — For the penalty for a misdemeanor, *see* 66-8-7 NMSA 1978.

For duty of driver to take precautions when approaching blind person, *see* 28-7-4 NMSA 1978.

**Section subject to assimilation under federal law.** — The offenses described by Section 66-5-39 NMSA 1978 (driving while license suspended), 66-8-102 NMSA 1978 (driving while under the influence) and this section (violation of traffic laws) are all criminal offenses, and, as such, the applicable sentences are assimilated for offenses committed on military installations within the state under the Assimilative Crimes Act, 18 U.S.C. § 13. *United States v. Adams*, 140 F.3d 895 (10th Cir.), cert. denied, 525 U.S. 895, 119 S. Ct. 219, 142 L. Ed. 2d 180 (1998).

**Enforcement outside jurisdiction.** — A municipal officer does not have the authority to enforce the Motor Vehicle Code outside the city limits of the municipality. 1988 Op. Att'y Gen. No. 88-77.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 204.

Entrapment to commit traffic offense, 34 A.L.R.4th 1167.

60 C.J.S. Motor Vehicles § 25.

Automated traffic enforcement systems. 26 A.L.R.6th 179.

## 66-7-4. Obedience to police officers.

No person shall willfully fail or refuse to comply with any lawful order or direction of any police officer invested by law with authority to direct, control or regulate traffic.

**History:** 1941 Comp., § 68-2126, enacted by Laws 1953, ch. 139, § 24; 1953 Comp., § 64-15-3; recompiled as 1953 Comp., § 64-7-4, by Laws 1978, ch. 35, § 374.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 19.

Motorist's liability for injury to one in or about a street or highway for the purpose of directing or warning traffic, 98 A.L.R.2d 1169.

60 C.J.S. Motor Vehicles § 43.

## 66-7-5. Public officers and employees to obey act; exceptions.

A. The provisions of Article 7, Chapter 66 NMSA 1978, applicable to the drivers of vehicles upon the highways, shall apply to the drivers of all vehicles owned or operated by the United States, this state or any county, city, town, district or any other political subdivision of the state, except as provided in this section and subject to such specific exceptions as are set forth in Article 7, Chapter 66 NMSA 1978 with reference to authorized emergency vehicles.

B. Unless specifically made applicable, the provisions of Article 7, Chapter 66 NMSA 1978 shall not apply to persons, teams, motor vehicles and other equipment while actually engaged in work upon the surface of a highway but shall apply to such persons and vehicles when traveling to or from such work.

**History:** 1953 Comp., § 64-7-5, enacted by Laws 1978, ch. 35, § 375.

**ANNOTATIONS**

**Cross references.** — For definition of "authorized emergency vehicle", *see* 66-1-4.1 NMSA 1978.

**Provision creating exemption for work on highway should be strictly construed** and the right of the defendant to the benefits of the exemption must be clear and unmistakable. *Sturgeon v. Clark*, 1961-NMSC-125, 69 N.M. 132, 364 P.2d 757.

**Provision recognizes fact that maintenance personnel cannot follow road rules.** — The legislature incorporated Section 64-15-4, 1953 Comp. (similar to this section), into the law in recognition of the fact that in constructing, repairing and maintaining highways there are circumstances under which men and equipment must be present on the surface of the highway without being held to comply with the rules of the road which are generally binding. *Sturgeon v. Clark*, 1961-NMSC-125, 69 N.M. 132, 364 P.2d 757.

**Actual work must be performed for exemption to apply.** — While providing for performing necessary work without being in violation of provisions otherwise applicable, the legislature was careful to restrict the exemption to situations where actual work was being performed on the surface of the highway. It is not for the court to extend the application beyond the clear language used. *Sturgeon v. Clark*, 1961-NMSC-125, 69 N.M. 132, 364 P.2d 757.

**Even without express direction from the legislature that local traffic regulations** should extend to drivers of federal, state or other vehicles, such drivers are amenable to them. 1955 Op. Att'y Gen. No. 55-6313.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 207.

60 C.J.S. Motor Vehicles § 21.

## 66-7-6. Authorized emergency vehicles.

A. The driver of an authorized emergency vehicle, when responding to an emergency call or when in pursuit of an actual or suspected violator of the law or when responding to but not upon returning from a fire alarm, may exercise the privileges set forth in this section subject to the conditions stated. The chief of the New Mexico state police or the appropriate local agency may designate emergency vehicles and revoke the designation. When vehicles are so designated, they are authorized emergency vehicles.

B. The driver of an authorized emergency vehicle may:

(1) park or stand, irrespective of the provisions of the Motor Vehicle Code [66-1-1 NMSA 1978];

(2) proceed past a red or stop signal or stop sign, but only after slowing down as necessary for safe operation;

(3) exceed the maximum speed limits so long as he does not endanger life or property; and

(4) disregard regulations governing direction of movement or turning in specified directions.

C. The exemptions granted to an authorized emergency vehicle apply only when the driver of the vehicle, while in motion, sounds an audible signal by bell, siren or exhaust whistle as reasonably necessary and when the vehicle is equipped with at least one lighted lamp displaying a red light visible under normal atmospheric conditions from a distance of five hundred feet to the front of the vehicle, except that an authorized emergency vehicle operated as a police vehicle need not be equipped with or display a red light visible from in front of the vehicle.

D. This section does not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons nor does it protect the driver from the consequences of his reckless disregard for the safety of others.

**History:** 1953 Comp., § 64-7-6, enacted by Laws 1978, ch. 35, § 376; 1989, ch. 318, § 22.

**ANNOTATIONS**

**Cross references.** — For definition of "authorized emergency vehicle", *see* 66-1-4.1 NMSA 1978.

**The 1989 amendment,** effective July 1, 1989, in Subsection A deleted "The director and" at the beginning of the second sentence and inserted "or the appropriate local agency" near the middle of that sentence.

**Fire department truck responding to call for an inhalator** was not a public ambulance traveling in an emergency within purview of former statute; exemption applied only on fire runs. *Tiedebohl v. Springer*, 1951-NMSC-044, 55 N.M. 295, 232 P.2d 694.

**Standard of care stated not that of ambulance driver to passenger.** — The standard of care provided by 64-15-5 1953 Comp. (similar to this section), is not the standard of care owing by an ambulance driver to his passengers. *Otero v. Physicians & Surgeons Ambulance Serv., Inc.*, 1959-NMSC-024, 65 N.M. 319, 336 P.2d 1070.

**Police vehicle showing red lights or sounding siren** is an emergency vehicle and all approaching or pursued vehicles are required to stop. 1959 Op. Att'y Gen. No. 59-20.

**Law reviews.** — For note, "Municipal Assumption of Tort Liability for Damage Caused by Police Officers," see 1 N.M. L. Rev. 263 (1971).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 208.

Emergency vehicles as exempt from regulations requiring obedience of traffic signs or signals, 164 A.L.R. 219, 2 A.L.R.3d 12, 2 A.L.R.3d 155, 2 A.L.R.3d 275, 3 A.L.R.3d 180, 3 A.L.R.3d 507.

Liability of operator of ambulance service for personal injuries to person being transported, 68 A.L.R.4th 14.

60 C.J.S. Motor Vehicles § 19.

## 66-7-7. Traffic laws apply to persons riding animals or driving animal-drawn vehicles.

Every person riding an animal or driving any animal-drawn vehicle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by Article 7 of Chapter 66 NMSA 1978, except those provisions of

Article 7 of Chapter 66 NMSA 1978 which by their very nature can have no application, and except where otherwise specifically provided in Aticle [Article] 7 of Chapter 66 NMSA 1978.

**History:** 1953 Comp., § 64-7-7, enacted by Laws 1978, ch. 35, § 377.

**ANNOTATIONS**

**Provision has no application to horses being driven across highway.** *Knox v. Trujillo*, 1963-NMSC-132, 72 N.M. 345, 383 P.2d 823.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Liability for damage to motor vehicle or injury to person riding therein from collision with runaway horse, or horse left unattended or untied in street, 49 A.L.R.4th 653.

60 C.J.S. Motor Vehicles § 43.

## 66-7-8. Provisions uniform throughout state.

The provisions of Article 7 of Chapter 66 NMSA 1978 shall be applicable and uniform throughout this state and in all political subdivisions and municipalities therein and no local authority shall enact or enforce any ordinance, rule or regulation in conflict with such provisions unless expressly authorized herein. Local authorities may, however, adopt additional traffic regulations which are not in conflict with such provisions.

**History:** 1953 Comp., § 64-7-8, enacted by Laws 1978, ch. 35, § 378.

**ANNOTATIONS**

**Ordinance proscribing drunk driving solely on public highways not inconsistent.** — A city ordinance which was construed by the court of appeals to proscribe drunk driving solely on public highways was not inconsistent with the broader state proscription. *City of Las Cruces v. Davis*, 1975-NMCA-044, 87 N.M. 425, 535 P.2d 68.

**Albuquerque's ordinance making it unlawful for any person under the influence to operate vehicle is enforceable** under and consistent with state law. The fact that the ordinance defines an attempted misdemeanor does not mean it is invalid because Section 30-28-1 NMSA 1978 prohibits sentencing for an attempted misdemeanor. The latter is a general law and is not applicable if a special law covers the same matter. Likewise, the last sentence of former Section 64-15-7, 1953 Comp. (similar to this section), specifically authorizes Albuquerque to adopt additional traffic regulations. *City of Albuquerque v. Chavez*, 1978-NMCA-032, 91 N.M. 559, 577 P.2d 457, cert. denied, 91 N.M. 610, 577 P.2d 1256.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 17, 206.

60 C.J.S. Motor Vehicles § 43.

## 66-7-9. Powers of local authorities.

A. The provisions of the Motor Vehicle Code [66-1-1 NMSA 1978] shall not be deemed to prevent local authorities, with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power, from:

(1) regulating the standing or parking of vehicles;

(2) regulating traffic by means of police officers or traffic-control signals;

(3) regulating or prohibiting processions or assemblages on the highways;

(4) designating particular highways as one-way highways and requiring that all vehicles thereon be moved in one specific direction;

(5) regulating the speed of vehicles in public parks;

(6) designating any highway as a through highway and requiring that all vehicles stop before entering or crossing it or designating any intersection as a stop intersection or a yield intersection and requiring all vehicles to stop or yield at one or more entrances to the intersection;

(7) restricting the use of highways as authorized in the Motor Vehicle Code;

(8) regulating the operation of bicycles and requiring their registration and licensing, including the requirement of a registration fee;

(9) regulating or prohibiting the turning of vehicles, or specified types of vehicles, at intersections;

(10) altering the maximum speed limits as authorized in the Motor Vehicle Code;

(11) adopting other traffic regulations as specifically authorized by the Motor Vehicle Code;

(12) regulating the operation of snowmobiles on public lands, waters and property under their jurisdiction and on streets and highways within their boundaries by resolution or ordinance of their governing bodies and by giving appropriate notice, if such regulation is not inconsistent with the provisions of Sections 66-9-1 through 66-9-13 NMSA 1978; or

(13) regulating the operation of golf carts on public lands and property under their jurisdiction and on streets and roads within their boundaries by resolution or ordinance of their governing bodies and requiring their registration and licensing, including the payment of a registration fee; provided, the resolution or ordinance shall:

(a) not permit operation of a golf cart on any state highway;

(b) require that the golf cart be in compliance with Section 66-3-887 NMSA 1978; and

(c) not be inconsistent with the provisions of Sections 66-3-1001 through 66-3-1016 NMSA 1978.

B. No local authority shall erect or maintain any stop sign or traffic-control signal at any location so as to require the traffic on any state highway to stop or yield before entering or crossing any intersecting highway unless approval in writing has first been obtained from the state transportation commission.

C. No ordinance or regulation enacted under Paragraph (4), (5), (6), (7) or (10) of Subsection A of this section shall be effective until signs giving notice of the local traffic regulations are posted upon or at the entrances to the highway or part thereof affected as may be most appropriate.

**History:** 1953 Comp., § 64-7-9, enacted by Laws 1978, ch. 35, § 379; 1983, ch. 271, § 1; 1995, ch. 172, § 1; 2003, ch. 142, § 10.

## ANNOTATIONS

**Cross references.** — For local traffic-control devices, *see* 66-7-103 NMSA 1978.

For municipal powers with respect to streets, *see* 3-49-1 NMSA 1978.

For municipal parking laws, *see* 3-50-1 NMSA 1978 et seq.

**The 2003 amendment,** effective July 1, 2003, substituted "transportation commission" for "highway commission" in Subsection B.

**The 1995 amendment,** effective July 1, 1995, added Paragraph (13) of Subsection A.

**County is local authority.** — A county as a "local authority" as defined in 1978 NMSA, § 66-1-4.10(E) has the powers granted to local authorities as contained in Sections 66-7-8 and 66-7-9, to enact motor vehicle ordinances. *Board of Comm'rs v. Greacen*, 2000-NMSC-016, 129 N.M. 177, 3 P.3d 672.

**Ordinance not unconstitutionally vague.** — A municipal ordinance which provided that "no operator of a vehicle shall fail to keep such vehicle within the boundaries of a

marked traffic lane, except when lawfully passing another, making a lawful turning movement or lawfully changing lanes" was not unconstitutionally vague. *State v. Gamlen*, 2009-NMCA-073, 146 N.M. 668, 213 P.3d 818.

**Provision is specific grant to enact ordinances conflicting therewith.** — Section 64-15-8, 1953 Comp. (similar to this section), is a specific grant of power to enact ordinances in conflict therewith to the extent limited thereby. *State ex rel. Coffin v. McCall*, 1954-NMSC-076, 58 N.M. 534, 273 P.2d 642.

**City has power to regulate parking,** even to the extent of prohibiting it in a proper case. *Farnsworth v. City of Roswell*, 1957-NMSC-053, 63 N.M. 195, 315 P.2d 839.

**No-parking regulation** normally represents an exercise by a municipality of its police power and it is a reasonable regulation. *Farnsworth v. City of Roswell*, 1957-NMSC-053, 63 N.M. 195, 315 P.2d 839.

**Municipalities could provide for higher prima facie speed.** — Under former Section 64-18-3, 1953 Comp., municipalities could, under certain conditions, provide by ordinance for a higher prima facie speed upon through highways. *Danz v. Kennon*, 1957-NMSC-090, 63 N.M. 274, 317 P.2d 321.

**Agreement between municipality and highway department not bartering away power.** — A municipal ordinance relative to widening a portion of state highway going through city and prohibiting parking on such portion of the highway which was enacted following the execution of a cooperative agreement between the city and state highway department was not void as a bartering away of the exercise of city's police power. *Farnsworth v. City of Roswell*, 1957-NMSC-053, 63 N.M. 195, 315 P.2d 839.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 15 to 17, 213, 214, 219, 221.

Validity and construction of statute or ordinance regulating vehicle towing business, 97 A.L.R.3d 495.

State or municipal towing, impounding, or destruction of motor vehicles parked or abandoned on streets or highways, 32 A.L.R.4th 728.

State and local government liability for injury or death of bicyclist due to defect or obstruction in public bicycle path, 68 A.L.R.4th 204.

Validity, construction, and application of state or local enactments regulating parades, 80 A.L.R.5th 255.

60 C.J.S. Motor Vehicles §§ 14, 23, 43.

## 66-7-10. No interference with rights of owners of real property with reference thereto.

Nothing in Article 7 of Chapter 66 NMSA 1978 shall be construed to prevent the owner of real property, used by the public for purposes of vehicular travel by permission of the owner and not as matter of right, from prohibiting such use, or from requiring other or different or additional conditions than those so specified or otherwise regulating such use as may seem best to such owner.

**History:** 1953 Comp., § 64-7-10, enacted by Laws 1978, ch. 35, § 380.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 232 to 234.

60 C.J.S. Motor Vehicles §§ 26, 43.

## 66-7-11. New Mexico state police power to close certain highways in emergencies.

Notwithstanding any rule or agreement of the department of transportation, the New Mexico state police, in cases of emergency where the condition of a state, United States or interstate highway presents a substantial danger to vehicular travel by reason of storm, fire, accident, spillage of hazardous materials or other unusual or dangerous conditions, may temporarily close such highway to vehicular travel; provided that the state police shall use all means necessary to reroute traffic around the accident or incident scene using lanes, shoulders, frontage roads or alternative routes that may be available and physically unaffected by the accident or incident. The department of transportation shall be notified of the highway closure as soon as practicable and assist the state police with traffic control. During the course of any investigation where evidence is present in the travel portion of the roadway, such evidence shall be documented and collected first so that the roadway can be cleared and traffic can be routed through the scene. Any other law enforcement agency that may be investigating an accident or incident where the investigating agency believes closure of the highway is necessary shall contact the state police immediately. The state police shall evaluate the emergency situation and determine if the closure is necessary and, with the assistance of the investigating agency, shall reroute traffic around the accident or incident scene. The state police shall make the final determination regarding the length of time it is necessary to have the highway closed and other law enforcement agencies shall adhere to the directions of the state police.

**History:** Laws 1987, ch. 280, § 1; 2007, ch. 175, § 1.

**ANNOTATIONS**

**The 2007 amendment,** effective June 15, 2007, added U.S. and interstate highways and provided criteria and the process for the temporary closure of highways.

## 66-7-12. Autonomous motor vehicles; notification and regulation of testing.

A. Prior to testing an autonomous motor vehicle or an autonomous commercial motor vehicle on a public highway in New Mexico, a person owning or operating such a motor vehicle shall notify the department of transportation at least five calendar days in advance of such operation on a form provided by rule by the department of at least the following information:

(1) the serial number and type of each motor vehicle to be tested;

(2) the routes to be used by the motor vehicles;

(3) the level of automated driving systems to be used by the motor vehicles; and

(4) such additional information as may be required by the department of transportation by rule.

B. The department of transportation shall promulgate rules regarding the notification and regulation process provided for in Subsection A of this section, including forms to be used and information to be submitted by operators of autonomous motor vehicles and autonomous commercial motor vehicles when testing such motor vehicles on public highways in New Mexico.

**History:** Laws 2021, ch. 114, § 7.

**ANNOTATIONS**

**Effective dates.** — Laws 2021, ch. 114, § 9 made Laws 2021, ch. 114, § 7 effective July 1, 2022.

## 66-7-13. Autonomous motor vehicles; standards; local regulation.

A. Autonomous motor vehicles and autonomous commercial motor vehicles shall meet all applicable federal motor vehicle safety standards. Additionally, autonomous motor vehicles and autonomous commercial motor vehicles shall be capable of being operated in compliance with applicable traffic and motor vehicle laws in New Mexico.

B. No political subdivision of the state may, by ordinance, resolution or any other means, prohibit the testing or operation of an autonomous motor vehicle or autonomous commercial motor vehicle within the jurisdictional boundaries of the political subdivision

solely on the basis of the motor vehicle being equipped with an automated driving system.

**History:** Laws 2021, ch. 114, § 8.

**ANNOTATIONS**

**Effective dates.** — Laws 2021, ch. 114, § 9 made Laws 2021, ch. 114, § 8 effective July 1, 2022.

# PART 2
# SIGNS, SIGNALS AND MARKINGS

## 66-7-101. State transportation commission to adopt sign manual.

The state transportation commission shall adopt a manual and specifications for a uniform system of traffic-control devices consistent with the provisions of Chapter 66, Article 7 NMSA 1978 for use upon highways within this state. The uniform system shall correlate with and so far as possible conform to the system then current as approved by the American association of state highway officials.

**History:** 1953 Comp., § 64-7-101, enacted by Laws 1978, ch. 35, § 381; 2003, ch. 142, § 11.

**ANNOTATIONS**

**The 2003 amendment,** effective July 1, 2003, substituted "transportation commission" for "highway commission" in the section heading and the section; and substituted "provisions of Chapter 66, Article 7 NMSA 1978" for "provisions of Article 7 of Chapter 64 NMSA 1953."

**Traffic control manual given prospective effect only.** — The manual of uniform traffic control adopted by the commission as it relates to stop signs is to be given prospective effect only. *Sellman v. Haddock*, 1959-NMSC-082, 66 N.M. 206, 345 P.2d 416.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 232 to 234.

Legal aspects of speed bumps, 60 A.L.R.4th 1249.

60 C.J.S. Motor Vehicles § 43.

## 66-7-102. State transportation commission to sign all state highways.

A. The state transportation commission shall place and maintain such traffic-control devices, conforming to its manual and specifications, upon all state highways as it deems necessary to indicate and to carry out the provisions of Chapter 66, Article 7 NMSA 1978 or to regulate, warn or guide traffic.

B. No local authority shall place or maintain any traffic-control device upon any highway under the jurisdiction of the state transportation commission except by permission of the commission.

**History:** 1953 Comp., § 64-7-102, enacted by Laws 1978, ch. 35, § 382; 2003, ch. 142, § 12.

**ANNOTATIONS**

**Cross references.** — For provisions preventing local authorities from enacting conflicting ordinances, *see* 66-7-8 NMSA 1978.

For powers of local authorities with respect to streets and highways, *see* 66-7-9 NMSA 1978.

**The 2003 amendment,** effective July 1, 2003, substituted "transportation commission" for "highway commission" in the section heading and the section; and substituted "provisions of Chapter 66, Article 7 NMSA 1978" for "provisions of Article 7 of Chapter 64 NMSA 1953."

**Liability for failure to post signs.** — In an action claiming that negligence of the highway and transportation department (now department of transportation) in failing to post proper traffic signs resulted in an accident, the question whether signs were necessary to fulfill the department's duty to reasonably regulate, warn or guide traffic was a question of fact for the jury. *Pollock v. State Hwy. & Transp. Dep't*, 1999-NMCA-083, 127 N.M. 521, 984 P.2d 768, cert. denied, 127 N.M. 389, 981 P.2d 1207.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Motorist's liability for collision at intersection of ordinary and arterial highways as affected by absence, displacement, or malfunctioning of stop sign or other traffic signal, 74 A.L.R.2d 242.

Liability of highway authorities arising out of motor vehicle accident allegedly caused by failure to erect or properly maintain traffic control device at intersection, 34 A.L.R.3d 1008.

Highways: governmental duty to provide curve warnings or markings, 57 A.L.R.4th 342.

Governmental liability for failure to post highway deer crossing warning signs, 59 A.L.R.4th 1217.

## 66-7-102.1. State transportation commission; speed limit signs.

The state transportation commission shall erect billboard-size signs at entry points into New Mexico on interstate and major state highways, warning and informing motorists of New Mexico speed limits, the fines for speeding in New Mexico and New Mexico's commitment to enforce its speed limits.

**History:** Laws 1989, ch. 320, § 7; 2003, ch. 142, § 13.

**ANNOTATIONS**

**Compiler's notes.** — This section is not a part of the Motor Vehicle Code but has been compiled as part of the Motor Vehicle Code as a convenience to the user.

**The 2003 amendment,** effective July 1, 2003, substituted "transportation commission" for "highway commission" in the section heading and the section.

## 66-7-103. Local traffic-control devices.

Local authorities in their respective jurisdiction [jurisdictions] shall place and maintain such traffic-control devices upon highways under their jurisdiction as they may deem necessary to indicate and to carry out the provisions of Article 7 of Chapter 66 NMSA 1978 or local traffic ordinances or to regulate, warn or guide traffic. All such traffic-control devices hereafter erected shall conform to the state manual and specifications.

**History:** 1953 Comp., § 64-7-103, enacted by Laws 1978, ch. 35, § 383.

**ANNOTATIONS**

**Cross references.** — For priority of state highways over secondary roads as to stopping or yielding, *see* 66-7-9 NMSA 1978.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not a part of the law.

**Placement of portable barricades** is a method of traffic control under the Manual of Uniform Traffic Control Devices which must be followed by local authorities. *Rutherford v. Chaves County*, 2003-NMSC-010, 133 N.M. 756, 69 P.3d 1199.

**Driver charged with obeying stop sign or being found negligent.** — Where stop sign had been erected and maintained by legally constituted authority and "was at least a de facto warning sign," the driver in the exercise of due care was charged with the duty to obey it, or run the risk of being found guilty of negligence. *Sellman v. Haddock*, 1959-NMSC-082, 66 N.M. 206, 345 P.2d 416.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Municipality's liability for failure to erect traffic warnings against entering or using street which is partially barred or obstructed by construction or improvement work, 52 A.L.R.2d 689.

Governmental liability for failure to post highway deer crossing warning signs, 59 A.L.R.4th 1217.

Legal aspects of speed bumps, 60 A.L.R.4th 1249.

60 C.J.S. Motor Vehicles § 43.

Liability of municipal corporation or electric utility for injury resulting from inoperative, malfunctioning, or otherwise defective street light. 11 A.L.R.5th 579.

## 66-7-103.1. Advance signal warning required.

A. As used in this section:

(1) "camera monitor" means a device or instrument that records a visual image of a motor vehicle being operated in violation of a traffic signal's red light directive to stop;

(2) "controller assembly" means a complete electrical device mounted in a cabinet for controlling the operation of a traffic signal;

(3) "rumble strips" means grooves in pavement or rows of raised pavement markers placed perpendicular to the direction of travel in a street or highway lane to alert inattentive drivers to a lane or traffic condition;

(4) "traffic signal" means a power-operated traffic control device by which traffic is alternately directed to stop and permitted to proceed; and

(5) "warning beacon" means a power-operated traffic control device with one or more signal sections that operates in a flashing mode.

B. When a county or municipality, including a home-rule municipality that has adopted a charter pursuant to Article 10, Section 6 of the constitution of New Mexico, uses a camera monitor in conjunction with a traffic signal at an intersection or other location to detect violation of the traffic signal's red light directive to stop, the county or municipality shall install, on streets or highways approaching the traffic signal from directions covered by the camera monitor, a warning sign or signs supplemented by a warning beacon or rumble strips.

C. The warning beacon described in Subsection B of this section shall be installed, together with the warning sign or signs, at a location and interconnected with the traffic signal controller assembly in a manner that will cause the beacon to flash yellow during the period when a person driving a motor vehicle passing the beacon at the legal speed for the street or highway will encounter a traffic signal red light, or a queue of motor vehicles resulting from the display of the red light, upon arrival at the signalized location.

D. If rumble strips described in Subsection B of this section are used, they shall be installed, together with warning signs, at a location in advance of a traffic signal so as to provide a driver, moving over the rumble strips at the legal speed for the street or highway, with warning that if the traffic signal is displaying a yellow signal, the driver will encounter a traffic signal red light, or a queue of motor vehicles resulting from the display of the red light, upon arrival at the signalized location.

E. Warning signs used with beacons or rumble strips shall warn a driver that the driver may encounter a traffic signal displaying a red light at an upcoming intersection and that the traffic signal is photo-enforced. When used with rumble strips, a warning sign shall be installed facing traffic approaching a signalized location on the near side of the street or highway and, if appropriate, a warning sign shall also be installed facing traffic approaching a signalized location on a median dividing opposite directions of traffic.

F. The warning sign and warning beacon described in Subsection B of this section shall comply with signs and beacons appropriate for the purposes of this section provided in the manual of uniform traffic control devices adopted by the state transportation commission pursuant to Section 66-7-101 NMSA 1978.

**History:** Laws 2007, ch. 368, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 368 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

## 66-7-104. Obedience to any required traffic-control devices.

A. The driver of any vehicle shall obey the instructions of any official traffic-control device applicable thereto placed in accordance with the provisions of Article 7 of Chapter 66 NMSA 1978, unless otherwise directed by a traffic or police officer, subject to the exceptions granted the driver of an authorized emergency vehicle in Article 7 of Chapter 66 NMSA 1978.

B. No provision of Article 7 of Chapter 66 NMSA 1978 for which signs are required shall be enforced against an alleged violator if at the time and place of the alleged violation an official sign is not in proper position and sufficiently legible to be seen by an ordinarily observant person. Whenever a particular section does not state that signs are required, such section shall be effective even though no signs are erected or in place.

**History:** 1953 Comp., § 64-7-104, enacted by Laws 1978, ch. 35, § 384.

**ANNOTATIONS**

**Cross references.** — For definition of "official traffic-control devices", *see* 66-1-4.13 NMSA 1978.

For the requirement of obedience to police officers, *see* 66-7-4 NMSA 1978.

**Violation of section not conclusive proof of negligence.** — A mere showing that decedent operated a motor vehicle negligently in violation of this section and Section 66-8-102 NMSA 1978 is not sufficient to warrant summary judgment as it does not conclusively establish that the decedent's negligence was a contributing proximate cause of the accident. *Sweenhart v. Co-Con, Inc.*, 1981-NMCA-031, 95 N.M. 773, 626 P.2d 310, cert. denied, 95 N.M. 669, 625 P.2d 1186.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 232 to 235, 248 to 252, 255.

What amounts to reckless driving of motor vehicle within statute making such a criminal offense, 52 A.L.R.2d 1337.

Liability for automobile accident other than direct collision with pedestrian as affected by reliance upon or disregard of stop-and-go signal, 2 A.L.R.3d 12.

Liability for collision of automobile with pedestrian at intersection as affected by reliance upon or disregard of stop-and-go signal, 2 A.L.R.3d 155.

Liability for automobile accident at intersection as affected by reliance upon or disregard of "yield" sign or signal, 2 A.L.R.3d 275.

Liability for automobile accident at intersection as affected by reliance upon or disregard of unchanging stop signal or sign, 3 A.L.R.3d 180.

Liability for automobile accident at intersection as affected by reliance upon or disregard of unchanging caution, slow, danger or like sign or signal, 3 A.L.R.3d 507.

Liability for collision of automobile with pedestrian at intersection as affected by reliance upon or disregard of traffic sign or signal other than stop-and-go signal, 3 A.L.R.3d 557.

61A C.J.S. Motor Vehicles § 714(3).

## 66-7-105. Traffic-control signal legend.

Whenever traffic is controlled by traffic-control signals exhibiting different colored lights, or colored lighted arrows, succesively [successively], one at a time or in combination, only the colors green, yellow and red shall be used, except for special pedestrian control signals carrying a word legend, and the lights indicated [indicate] and apply to drivers of vehicles and pedestrians:

A. green alone:

(1) vehicular traffic facing the signal may proceed straight through or turn right or left unless a sign at the place prohibits either turn. Vehicular traffic, including vehicles turning right or left, shall yield the right-of-way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time the signal is exhibited; and

(2) pedestrians facing the signal may proceed across the roadway within any marked or unmarked crosswalk;

B. yellow alone when shown following the green signal:

(1) vehicular traffic facing the signal is warned that the red signal will be exhibited immediately thereafter and the vehicular traffic shall not enter the intersection when the red signal is exhibited except to turn as hereinafter provided; and

(2) no pedestrian facing the signal shall enter the roadway until the green is shown alone unless authorized to do so by a pedestrian "walk" signal;

C. red alone:

(1) vehicular traffic facing the signal shall stop before entering the crosswalk on the near side of the intersection or, if there is no crosswalk, then before entering the intersection, and may turn right after standing until the intersection may be entered safely, provided that such vehicular traffic shall yield the right-of-way to all pedestrians and vehicles lawfully in or approaching the intersection. Whenever the local authorities in their respective jurisdictions determine on the basis of an engineering and traffic investigation that a turn as hereinabove provided should be prohibited at a particular intersection, such turn may be prohibited by the posting of signs at the intersection indicating that such a turn is prohibited;

(2) vehicular traffic on a one-way street facing the signal shall stop before entering the crosswalk on the near side of the intersection or if there is no crosswalk, then before entering the intersection, and if a left turn onto a one-way street in the proper direction is intended, may turn left after stopping until the intersection may be entered safely, provided that such vehicular traffic shall yield the right-of-way to all pedestrains [pedestrians] and vehicles lawfully in or approaching the intersection;

(3) whenever the local authorities in their respective jurisdictions determine on the basis of an engineering and traffic investigation that a turn as hereinabove provided should be prohibited at a particular intersection, such turn may be prohibited by the posting of signs at the intersection indicating that such a turn is prohibited; and

(4) no pedestrian facing the signal shall enter the roadway until the green is shown alone unless authorized to do so by a pedestrian "walk" signal;

D. red with green arrow:

(1) vehicular traffic facing the signal may cautiously enter the intersection only to make the movement indicated by the arrow, but shall yield the right-of-way to pedestrians lawfully within a crosswalk and to other traffic lawfully using the intersection; and

(2) no pedestrian facing the signal shall enter the roadway unless he can do so safely and without interfering with any vehicular traffic;

E. if an official traffic-control signal is erected and maintained at a place other than an intersection, the provisions of this section apply except as to those provisions which by their nature can have no application. Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but in the absence of any such sign or marking, the stop shall be made at the signal; and

F. when a sign is in place permitting a turn, vehicular traffic facing a steady red signal may cautiously enter the intersection to make the turn indicated by the sign after stopping as required by Paragraphs (1) and (2) of Subsection C of this section. Vehicular traffic shall yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection.

**History:** 1941 Comp., § 68-2205, enacted by Laws 1953, ch. 139, § 34; 1953 Comp., § 64-16-5; Laws 1969, ch. 169, § 3; 1971, ch. 37, § 1; 1973, ch. 158, § 1; 1977, ch. 72, § 1; recompiled as 1953 Comp., § 64-7-105, by Laws 1978, ch. 35, § 385.

## ANNOTATIONS

**Cross references.** — For definitions applicable to this section, *see* 66-1-4 to 66-1-4.20 NMSA 1978.

For the penalty assessment for failure to obey signal, *see* 66-8-116 NMSA 1978.

**Bracketed material.** — The bracketed material in the introductory paragraph and in Subsection C(2) was inserted by the compiler and it is not a part of the law.

**Pedestrian has right-of-way when no signal of traffic-control type.** *Ward v. Ray*, 1967-NMSC-264, 78 N.M. 566, 434 P.2d 388.

**No contributory negligence if driver careful and did not hear siren.** — Plaintiff who stopped in obedience to red light at street intersection, waited when green light went on until cross traffic had come to stop, and not hearing any siren and seeing no obstacle in immediate pathway, proceeded through intersection at 10 miles per hour was not contributorily negligent as to intersectional collision with fire truck. *Tiedebohl v. Springer*, 1951-NMSC-044, 55 N.M. 295, 232 P.2d 694.

**Commission must approve all traffic-control devices.** — By virtue of the specific provisions of this section, municipalities may not permit right turns on red lights unless the auxiliary signal provided by Subsection D thereof is also present, and insofar as highways under the jurisdiction of the commission are concerned, all traffic control devices of whatever nature are subject to the approval of the commission. 1953 Op. Att'y Gen. No. 53-5837.

## 66-7-106. Pedestrian-control signals.

A. Whenever special pedestrian control signals exhibiting the words "walk" or "don't walk" are in place:

(1) "walk" indicates that pedestrians facing the signal may proceed across the roadway in the direction of the signal and shall be given the right of way by drivers of all vehicles; and

(2) "don't walk" indicates that no pedestrian shall start to cross the roadway in the directions of the signal, but any pedestrian who has partially completed the pedestrian's crossing on the walk signal shall proceed to a sidewalk or safety island while the don't walk signal is showing.

B. A person who violates the provisions of this section is guilty of a penalty assessment misdemeanor.

**History:** 1941 Comp., § 68-2206, enacted by Laws 1953, ch. 139, § 35; 1953 Comp., § 64-16-6; Laws 1969, ch. 169, § 4; recompiled as 1953 Comp., § 64-7-106, by Laws 1978, ch. 35, § 386; 2018, ch. 74, § 41.

**ANNOTATIONS**

**The 2018 amendment,** effective July 1, 2018, provided a penalty for a violation of this section, and made technical changes; added new subsection designation "A.", and in Subsection A, added new paragraph designations "(1)" and "(2)"; and added new Subsection B.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Liability for collision of automobile with pedestrian as affected by reliance upon or disregard of stop-and-go signal, 2 A.L.R.3d 155.

Liability for collision of automobile with pedestrian at intersection as affected by reliance upon or disregard of traffic sign or signal other than stop-and-go signal, 3 A.L.R.3d 557.

## 66-7-107. Flashing signals.

A. Whenever an illuminated flashing red or yellow signal is used in a traffic sign or signal, it shall require obedience by vehicular traffic as follows:

(1) flashing red (stop signal): when a red lens is illuminated with rapid intermittent flashes, drivers of vehicles shall stop before entering the nearest crosswalk at an intersection or at a limit line when marked or, if none, before entering the intersection, and the right to proceed shall be subject to the rules applicable after making a stop at a stop sign; or

(2) flashing yellow (caution signal): when a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may proceed through the intersection or pass such signal only with caution.

B. This section does not apply at railroad grade crossings. Conduct of drivers of vehicles approaching railroad grade crossings shall be governed by the rules as set forth in Section 66-7-341 NMSA 1978.

C. A person who violates the provisions of this section is guilty of a penalty assessment misdemeanor.

**History:** 1953 Comp., § 64-7-107, enacted by Laws 1978, ch. 35, § 387; 2018, ch. 74, § 42.

**ANNOTATIONS**

**The 2018 amendment,** effective July 1, 2018, provided a penalty for a violation of this section, made technical changes, and added Subsection C.

**Flashing red signal light directs drivers of vehicles to stop,** but it does not then alternately direct them to proceed as does the ordinary traffic light described in Section 66-7-105 NMSA 1978 which exhibits different colored lights successively, each color in turn directing drivers to stop, to go, etc. Similarly, a flashing yellow signal light directs drivers of vehicles to proceed with caution, but it does not alternately direct them to stop. *Ward v. Ray*, 1967-NMSC-264, 78 N.M. 566, 434 P.2d 388.

**Entering flashing yellow intersection with view obstructed may be violation.** — Where first northbound truck slowed down, for a flashing yellow light, but not as much as the second truck, and as the first truck approached the intersection, its driver's view was obstructed by the second, more cautious, truck, there was a factual question as to whether the first truck's driver complied with Section 64-16-17, 1953 Comp. (similar to this section). *Butcher v. Safeway Stores, Inc.*, 1967-NMCA-029, 78 N.M. 593, 435 P.2d 212.

**Pedestrian has right-of-way if no signal of traffic-control type.** *Ward v. Ray*, 1967-NMSC-264, 78 N.M. 566, 434 P.2d 388.

## 66-7-108. Display of unauthorized signs, signals or markings.

A. A person shall not place, maintain or display upon or in view of any highway any unauthorized sign, signal, marking or device that purports to be or is an imitation of or resembles an official traffic-control device or railroad sign or signal or that attempts to direct the movement of traffic or that hides from view or interferes with the effectiveness of any official traffic-control device or any railroad sign or signal. A person shall not place or maintain nor shall a public authority permit upon a highway any traffic sign or signal bearing any commercial advertising.

B. Every such prohibited sign, signal, marking or device is declared to be a public nuisance, and the authority having jurisdiction over the highway is empowered to remove the sign, signal, marking or device or cause it to be removed without notice.

C. A person who violates the provisions of this section is guilty of a penalty assessment misdemeanor.

**History:** 1953 Comp., § 64-7-108, enacted by Laws 1978, ch. 35, § 388; 2018, ch. 74, § 43.

**ANNOTATIONS**

**Cross references.** — For definitions of "official traffic-control devices" and "railroad sign or signal", *see* 66-1-4.13 and 66-1-4.15 NMSA 1978 respectively.

For abatement of a public nuisance, *see* 30-8-8 NMSA 1978.

**The 2018 amendment,** effective July 1, 2018, provided a penalty for a violation of this section, clarified certain provisions, and made technical changes; in Subsection B, after "marking", added "or device", and after "remove the", added "sign, signal, marking or device"; and added Subsection C.

**Railroad's duty not limited by section.** — While final authority for the installation of particular safety devices at grade crossings rests with state and local governments, the allocation of authority does not relieve the railroads of their duty to take all reasonable precautions to maintain grade crossing safety. *Largo v. Atchison, Topeka & Santa Fe Ry.*, 2002-NMCA-021, 131 N.M. 621, 41 P.3d 347.

## 66-7-109. Interference with official traffic-control devices or railroad signs or signals.

No person shall without lawful authority attempt to or in fact alter, deface, injure, knock down or remove any official traffic-control device or any railroad sign or signal or any inscription, shield or insignia thereon, or any part thereof.

**History:** 1941 Comp., § 68-2209, enacted by Laws 1953, ch. 139, § 38; 1953 Comp., § 64-16-9; recompiled as 1953 Comp., § 64-7-109, by Laws 1978, ch. 35, § 389.

**ANNOTATIONS**

**Cross references.** — For definitions of "official traffic-control devices" and "railroad sign or signal", *see* 66-1-4.13 and 66-1-4.15 NMSA 1978 respectively.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Private person's negligent interference with traffic signs or signals, 64 A.L.R.2d 1364.

Liability of railroad for injury or damage resulting from motor vehicle striking bridge or underpass because of insufficient vertical clearance, 67 A.L.R.2d 1364.

# PART 3
# ACCIDENTS

## 66-7-201. Accidents involving death or personal injuries.

A. The driver of any vehicle involved in an accident resulting in injury to or death of any person shall immediately stop the vehicle at the scene of the accident or as close thereto as possible, but shall then immediately return to and in every event shall remain at the scene of the accident until he has fulfilled the requirements of Section 66-7-203 NMSA 1978. Every such stop shall be made without obstructing traffic more than is necessary.

B. Any person failing to stop or to comply with the requirements of Section 66-7-203 NMSA 1978 where the accident results in great bodily harm or death is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

C. Any person who knowingly fails to stop or to comply with the requirements of Section 66-7-203 NMSA 1978 where the accident results in great bodily harm or death is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

D. Any person failing to stop or comply with the requirements of Section 66-7-203 NMSA 1978 where the accident does not result in great bodily harm or death is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Subsection A of Section 31-19-1 NMSA 1978.

E. The director shall revoke the license or permit to drive and any nonresident operating privilege of the person so convicted.

**History:** 1953 Comp., § 64-7-201, enacted by Laws 1978, ch. 35, § 390; 1987, ch. 97, § 2; 1987 ch. 101, § 1; 1989, ch. 383, § 1.

**ANNOTATIONS**

**Cross references.** — For mandatory revocation of driver's license, *see* 66-5-29 NMSA 1978.

For immediate appearance before magistrate for violation, *see* 66-8-122 NMSA 1978.

For settlements, releases and statements of injured patients, *see* 41-1-1, 41-1-2 NMSA 1978.

**The 1989 amendment,** effective June 16, 1989, substituted "immediately" for "forthwith" near the middle of the first sentence of Subsection A, added present Subsection C, and redesignated former Subsections C and D as present Subsections D and E.

**The 1987 amendment,** effective June 19, 1987, in Subsection A, substituted "66-7-203 NMSA 1978" for "64-7-203 NMSA 1953" at the end of the first sentence; rewrote Subsection B; inserted the present Subsection C; and relettered former Subsection C as the present Subsection D.

**Laws 1987, ch. 97, § 2,** effective April 7, 1987, also amended 66-7-201 NMSA 1978. The section was set out as amended by Laws 1987, ch. 101, § 1. *See* 12-1-8 NMSA 1978.

**Constitutionality.** — This section is not vague on the basis that there is no way to distinguish between the elements of the offense contained in Subsections B and C. *State v. Cumpton*, 2000-NMCA-033, 129 N.M. 47, 1 P.3d 429, cert. denied, 128 N.M. 688, 997 P.2d 820.

**Proof required for conviction.** — In order to convict defendant of accidents involving death or personal injuries, the state was required to prove that defendant: (1) operated a motor vehicle; (2) was involved in an accident which caused great bodily harm or death of the victim; (3) failed to stop and/or failed to remain at the scene of the accident; and (4) failed to render reasonable aid to the victim. *State v. Guzman*, 2004-NMCA-097, 136 N.M. 253, 96 P.3d 1173, cert. denied, 2004-NMCERT-008, 136 N.M. 492, 100 P.3d 197.

**"Involved in an accident" construed.** — The plain meaning of "involved in an accident," within the context of the statute as a whole, applies to more than collisions. Our legislature intended the statutory phrase "involved in an accident" to be interpreted more broadly based on a recognition that the underlying policy objectives of the hit-and-run statute is to prohibit drivers from evading criminal or civil liability, to ensure people receive necessary aid or medical attention, and to deter drivers from thwarting or impeding investigations and avoiding liability for the harm they cause by failing to stop or failing to comply with this section. *State v. Hertzog*, 2020-NMCA-031.

**The district court properly instructed the jury on "involved in an accident".** — Where defendant was charged with leaving the scene of an accident resulting in great bodily harm or death based on evidence that during a drive, an argument began

between defendant and his girlfriend (victim) where the victim punched defendant in the face and jumped out of the moving vehicle that defendant was driving, and although defendant was aware that the victim had jumped out of the truck, he did not stop at or near the scene to investigate the victim's condition, report the incident, provide identification, or render assistance, and where, at trial, defendant claimed that the given jury instruction for leaving the scene of an accident was improper and that a proper instruction should equate "accident" with "collision", the district court did not err by refusing to give defendant's proposed instruction because the term "accident" should not be limited to collisions, thereby excluding other types of accidents that seriously injure or, as in this case, kill a person. *State v. Hertzog*, 2020-NMCA-031.

**Sufficient evidence of leaving the scene of an accident.** — Where defendant was charged with leaving the scene of an accident resulting in great bodily harm or death based on evidence that during a drive, an argument began between defendant and his girlfriend (victim) where the victim punched defendant in the face and jumped out of the moving vehicle that defendant was driving, and although defendant was aware that the victim had jumped out of the truck, he did not stop at or near the scene to investigate the victim's condition, report the incident, provide identification, or render assistance, there was sufficient evidence to support defendant's conviction where the state proved beyond a reasonable doubt that defendant was the driver of a motor vehicle involved in an accident which resulted in the death of the victim, that defendant knew that there was an accident, that defendant knowingly failed to stop his vehicle at the scene of the accident or as close as possible without obstructing traffic more than necessary, and that defendant knowingly failed to comply with the requirements of § 66-7-203 NMSA 1978. *State v. Hertzog*, 2020-NMCA-031.

**Duty to give information and render aid is an essential element of leaving the scene of an accident.** — A driver's failure to satisfy the requirements of 66-7-203 NMSA 1978, prior to leaving the scene of an accident is an essential element for a conviction of the crime of leaving the scene of an accident involving death or personal injuries. *State v. Esparza*, 2020-NMCA-050, cert. denied.

**Failing to properly instruct on defendant's duty to remain at the scene of an accident resulted in fundamental error.** — Where defendant was charged with multiple crimes as a result of a car accident, including leaving the scene of an accident involving personal injuries (no great bodily harm or death), and where the trial court instructed the jury to find defendant guilty if the state proved beyond a reasonable doubt that defendant operated a vehicle involved in an accident, the accident resulted in injury, and defendant failed to immediately stop, return, and remain at the scene, but failed to instruct the jury regarding a driver's duty to satisfy the requirements of 66-7-203 NMSA 1978 prior to leaving the scene, an essential element for a conviction of the crime of leaving the scene of an accident involving death or personal injuries, the omitted element of whether defendant complied with 66-7-203 NMSA 1978's requirements was not undisputed and indisputable and therefore the error was fundamental. *State v. Esparza*, 2020-NMCA-050, cert. denied.

**Sufficient evidence of leaving the scene of an accident.** — Where defendant was charged with leaving the scene of an accident involving personal injuries (no great bodily harm or death), and where the evidence presented at trial established that a vehicle driven by defendant collided with another vehicle, that the driver of the second vehicle was ejected and severely injured, that shortly after the collision, several drivers stopped and unsuccessfully attempted to render aid to the injured driver, who died shortly thereafter from his injuries, that defendant got out of his car, began pacing back and forth, and then left the scene on foot before the first emergency responder arrived, there was sufficient evidence to permit a reasonable jury to conclude that each element of leaving the scene of an accident was established beyond a reasonable doubt. *State v. Esparza*, 2020-NMCA-050, cert. denied.

**Every legitimate inference will be drawn against a hit-and-run driver.** *Lopez v. Townsend*, 1938-NMSC-058, 42 N.M. 601, 82 P.2d 921.

**Vehicular homicide and leaving the scene of an accident.** — Where defendant drove a pickup toward a group of children who were trick-or-treating on Halloween; the chaperone pushed the children out of the way but was struck and killed; defendant stopped and then left the scene of the accident; defendant was convicted of homicide by vehicle under 66-8-101 NMSA 1978 and knowingly leaving the scene of an accident involving great bodily harm or death under 66-7-201 NMSA 1978, defendant's convictions did not violate defendant's double jeopardy rights. *State v. Melendrez*, 2014-NMCA-062, cert. denied, 2014-NMCERT-006.

**Magistrates have jurisdiction of this misdemeanor offense and can impose** the maximum penalty and/or a fine, the sentence, if imposed, to be served in the state penitentiary. 1973 Op. Att'y Gen. No. 73-67 (rendered under prior law).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 289 to 295, 363, 382.

Failure to comply with statute requiring one involved in automobile accident to stop or report as affecting question as to suspension or tolling statute of limitation, 10 A.L.R.2d 564.

Acquittal of driver of hit-and-run driving as bar to prosecution of one other than driver, 62 A.L.R.2d 1130.

Applicability of criminal "hit-and-run" statute to accidents occurring on private property, 77 A.L.R.2d 1171.

Violation of statute requiring one involved in an accident to stop and render aid as affecting civil liability, 80 A.L.R.2d 299.

Sufficiency of showing of driver's involvement in motor vehicle accident to support prosecution for failure to stop, furnish identification, or render aid, 82 A.L.R.4th 232.

Necessity and sufficiency of showing, in criminal prosecution under "hit-and-run" statute, accused's knowledge of accident, injury, or damage, 26 A.L.R.5th 1.

61A C.J.S. Motor Vehicles §§ 674 to 683.

Admissibility of evidence of prior accidents or injuries at same place. 15 A.L.R.6th 1.

## 66-7-202. Accidents involving damage to vehicle.

The driver of any vehicle involved in an accident resulting only in damage to a vehicle which is driven or attended by any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible but shall forthwith return to and in every event shall remain at the scene of such accident until he has fulfilled the requirements of Section 66-7-203 NMSA 1978. Every such stop shall be made without obstructing traffic more than is necessary. Any person failing to stop or comply with said requirements under such circumstances shall be guilty of a misdemeanor.

**History:** 1953 Comp., § 64-7-202, enacted by Laws 1978, ch. 35, § 391.

**ANNOTATIONS**

**Cross references.** — For the penalty for a misdemeanor, *see* 66-8-7 NMSA 1978.

For immediate appearance before magistrate for violation, *see* 66-8-122 NMSA 1978.

**Sufficient evidence to support defendant's conviction for leaving the scene of an accident.** — There was sufficient evidence for a reasonable jury to infer that defendant left the scene of an accident without fulfilling his statutory duty to provide reasonable assistance to the other driver where the jury was instructed in relevant part that the state must prove defendant did not immediately stop, did not return to and did not remain at the scene of the accident, and where defendant testified that he "was trying to flee the scene" and the state presented evidence of the distance defendant ran before being tackled by an officer. *State v. Nieto*, 2023-NMCA-072.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Sufficiency of showing of driver's involvement in motor vehicle accident to support prosecution for failure to stop, furnish identification, or render aid, 82 A.L.R.4th 232.

Admissibility of evidence of prior accidents or injuries at same place. 15 A.L.R.6th 1.

## 66-7-203. Duty to give information and render aid.

The driver of any vehicle involved in an accident resulting in injury to or death of any person or damage to any vehicle which is driven or attended by any person shall give his name, address and the registration number of the vehicle he is driving and shall upon request exhibit his driver's license to the person struck or the driver or occupant of

or person attending any vehicle collided with and shall render to any person injured in such accident reasonable assistance, including the carrying, or the making of arrangements for the carrying, of such person to a physician, surgeon or hospital for medical or surgical treatment if it is apparent that such treatment is necessary or if such carrying is requested by the injured person.

**History:** 1953 Comp., § 64-7-203, enacted by Laws 1978, ch. 35, § 392.

## ANNOTATIONS

**Proof required for conviction.** — In order to convict defendant of accidents involving death or personal injuries, the state was required to prove that defendant: (1) operated a motor vehicle; (2) was involved in an accident which caused great bodily harm or death of the victim; (3) failed to stop and/or failed to remain at the scene of the accident; and (4) failed to render reasonable aid to the victim. *State v. Guzman*, 2004-NMCA-097, 136 N.M. 253, 96 P.3d 1173, cert. denied, 2004-NMCERT-008, 136 N.M. 492, 100 P.3d 197.

**"Involved in an accident" construed.** — The plain meaning of "involved in an accident," within the context of the statute as a whole, applies to more than collisions. Our legislature intended the statutory phrase "involved in an accident" to be interpreted more broadly based on a recognition that the underlying policy objectives of the hit-and-run statute is to prohibit drivers from evading criminal or civil liability, to ensure people receive necessary aid or medical attention, and to deter drivers from thwarting or impeding investigations and avoiding liability for the harm they cause by failing to stop or failing to comply with this section. *State v. Hertzog*, 2020-NMCA-031.

**The district court properly instructed the jury on "involved in an accident".** — Where defendant was charged with leaving the scene of an accident resulting in great bodily harm or death based on evidence that during a drive, an argument began between defendant and his girlfriend (victim) where the victim punched defendant in the face and jumped out of the moving vehicle that defendant was driving, and although defendant was aware that the victim had jumped out of the truck, he did not stop at or near the scene to investigate the victim's condition, report the incident, provide identification, or render assistance, and where, at trial, defendant claimed that the given jury instruction for leaving the scene of an accident was improper and that a proper instruction should equate "accident" with "collision", the district court did not err by refusing to give defendant's proposed instruction because the term "accident" should not be limited to collisions, thereby excluding other types of accidents that seriously injure or, as in this case, kill a person. *State v. Hertzog*, 2020-NMCA-031.

**Sufficient evidence of leaving the scene of an accident.** — Where defendant was charged with leaving the scene of an accident resulting in great bodily harm or death based on evidence that during a drive, an argument began between defendant and his girlfriend (victim) where the victim punched defendant in the face and jumped out of the moving vehicle that defendant was driving, and although defendant was aware that the

victim had jumped out of the truck, he did not stop at or near the scene to investigate the victim's condition, report the incident, provide identification, or render assistance, there was sufficient evidence to support defendant's conviction where the state proved beyond a reasonable doubt that defendant was the driver of a motor vehicle involved in an accident which resulted in the death of the victim, that defendant knew that there was an accident, that defendant knowingly failed to stop his vehicle at the scene of the accident or as close as possible without obstructing traffic more than necessary, and that defendant knowingly failed to comply with the requirements of this section. *State v. Hertzog*, 2020-NMCA-031.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 289 to 295, 766.

Validity and construction of statute making it a criminal offense for the operator of a motor vehicle not to carry or display his operator's license or the vehicle registration certificate, 6 A.L.R.3d 506.

Sufficiency of showing of driver's involvement in motor vehicle accident to support prosecution for failure to stop, furnish identification, or render aid, 82 A.L.R.4th 232.

Necessity and sufficiency of showing, in criminal prosecution under "hit-and-run" statute, accused's knowledge of accident, injury, or damage, 26 A.L.R.5th 1.

61A C.J.S. Motor Vehicles §§ 652, 661, 674.

## 66-7-204. Duty upon striking unattended vehicle.

The driver of any vehicle which collides with any vehicle which is unattended shall immediately stop and shall then and there either locate and notify the operator or owner of such vehicle of the name and address of the driver and owner of the vehicle striking the unattended vehicle or shall leave in a conspicuous place in the vehicle struck a written notice giving the name and address of the driver and of the owner of the vehicle doing the striking and a statement of the circumstances thereof.

**History:** 1941 Comp., § 68-2304, enacted by Laws 1953, ch. 139, § 42; 1953 Comp., § 64-17-4; recompiled as 1953 Comp., § 64-7-204, by Laws 1978, ch. 35, § 393.

**ANNOTATIONS**

**Warrantless home arrest not merited.** — The minor offenses of careless driving and leaving the scene of an accident do not merit the extraordinary recourse of warrantless home arrest. *Howard v. Dickerson*, 34 F.3d 978 (10th Cir. 1994).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 60 C.J.S. Motor Vehicles § 43.

## 66-7-205. Duty upon striking fixtures or other property upon a highway.

The driver of any vehicle involved in an accident resulting only in damage to fixtures or other property legally upon or adjacent to a highway shall take reasonable steps to locate and notify the owner or person in charge of such property of such fact and of his name and address and of the registration number of the vehicle he is driving and shall upon request exhibit his driver's license and shall make report of such accident when and as required in Section 66-7-207 NMSA 1978.

**History:** 1953 Comp., § 64-7-205, enacted by Laws 1978, ch. 35, § 394.

## 66-7-206. Immediate notice of accidents.

The driver of a vehicle, the autonomous motor vehicle operator or the autonomous commercial motor vehicle operator, if applicable, involved in an accident resulting in bodily injury to or death of any person or property damage to an apparent extent of five hundred dollars ($500) or more shall immediately, by the quickest means of communication, give notice of the accident to the police department if the accident occurs within a municipality; otherwise to the office of the county sheriff or the nearest office of the New Mexico state police. In the case of an autonomous motor vehicle or autonomous commercial motor vehicle operating without a human driver, the owner of that motor vehicle or person working on behalf of the vehicle owner shall be responsible for providing the notice required by this section.

**History:** 1941 Comp., § 68-2306, enacted by Laws 1953, ch. 139, § 44; 1953 Comp., § 64-17-6; Laws 1967, ch. 12, § 1; recompiled as 1953 Comp., § 64-7-206, by Laws 1978, ch. 35, § 395; 1991, ch. 160, § 15; 2021, ch. 114, § 5.

**ANNOTATIONS**

**The 2021 amendment,** effective July 1, 2022, included autonomous motor vehicle operators and autonomous commercial motor vehicle operators in an existing provision that requires a driver involved in an accident to give notice of the accident to law enforcement, and, in the case of an autonomous motor vehicle or autonomous commercial motor vehicle operating without a human driver, placed the responsibility of providing notice on the owner of the motor vehicle or the person working on behalf of the owner of the vehicle owner; and after "The driver of a vehicle", added "the autonomous motor vehicle operator or the autonomous commercial motor vehicle operator, if applicable", and after "New Mexico state police", added "In the case of an autonomous motor vehicle or autonomous commercial motor vehicle operating without a human driver, the owner of that motor vehicle or person working on behalf of the vehicle owner shall be responsible for providing the notice required by this section.".

**The 1991 amendment,** effective July 1, 1991, inserted "bodily" preceding "injury"; substituted "five hundred dollars ($500)" for "one hundred dollars ($100)"; and made minor stylistic changes.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Construction and application of "amnesty" provision whereby automobile driver leaving scene of accident may report to police within stated time without risk of use of his report against him, 36 A.L.R.4th 907.

Admissibility of police officer's testimony at state trial relating to motorist's admissions made in or for automobile accident report required by law, 46 A.L.R.4th 291.

## 66-7-207. Written reports of accidents.

A. The driver of a vehicle involved in an accident resulting in bodily injury to or death of any person or total property damage to an apparent extent of five hundred dollars ($500) or more shall, within five days after the accident, forward a written report of the accident to the department of transportation.

B. The department of transportation may require any driver of a vehicle involved in an accident of which report must be made as provided in this section to file supplemental reports whenever the original report is insufficient in the opinion of the department of transportation and may require witnesses of accidents to render reports concerning the accidents to the department of transportation.

C. Every law enforcement officer who, in the regular course of duty, investigates a motor vehicle accident of which report must be made as required in this section, either at the time of and at the scene of the accident or thereafter by interviewing participants or witnesses, shall, within twenty-four hours after completing the investigation, forward a written report of the accident to the department of transportation. A law enforcement officer shall also, within twenty-four hours after completing the investigation, forward the written report of the accident to the motor transportation division of the department of public safety if the accident involves a commercial motor vehicle and results in:

(1) bodily injury to any person and the person is transported to a medical facility for immediate medical attention;

(2) the death of any person; or

(3) any vehicle involved in the accident being towed from the scene due to disabling damage caused by the accident.

**History:** 1953 Comp., § 64-7-207, enacted by Laws 1978, ch. 35, § 396; 1985, ch. 125, § 1; 1989, ch. 318, § 23; 1991, ch. 160, § 16; 2007, ch. 209, § 6.

**ANNOTATIONS**

**The 2007 amendment,** effective July 1, 2007, amended Subsection C to require a law enforcement officer to send an investigation report to the motor transportation division within twenty-four hours after the investigation if the accident involves bodily injury, death or towing of a vehicle in the accident.

**The 1991 amendment,** effective July 1, 1991, substituted "five hundred dollars ($500)" for "two hundred fifty dollars ($250)" in Subsection A and inserted "concerning the accidents" following "reports" near the end of Subsection B.

**The 1989 amendment,** effective July 1, 1989, substituted "state highway and transportation department" for "division" throughout the section.

**Police officer must forward written report of accident.** — The driver of a vehicle involved in an accident must report the accident to the department if total property damage is $25.00 (now $500) or more and every law enforcement officer investigating the accident must forward a written report of the accident to the department of motor vehicles (now motor vehicle division). 1967 Op. Att'y Gen. No. 67-87.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Failure to comply with statute requiring one involved in automobile accident to stop or report as affecting question as to suspension or tolling statute of limitation, 10 A.L.R.2d 564.

Admissibility of police officer's testimony at state trial relating to motorist's admissions made in or for automobile accident report required by law, 46 A.L.R.4th 291.

60 C.J.S. Motor Vehicles § 43.

## 66-7-207.1. Motor vehicle accidents involving a school bus; investigation by a law enforcement officer certified as an accident reconstructionist.

All motor vehicle accidents involving a school bus that result in a fatality or life threatening injury shall be investigated by a law enforcement officer certified as an accident reconstructionist.

**History:** Laws 2001, ch. 232, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2001, ch. 232, § 2 made the section effective July 1, 2001.

## 66-7-208. When driver unable to report.

A. Whenever the driver of a vehicle is physically incapable of giving an immediate notice of an accident as required in Section 66-7-206 NMSA 1978 and there was

another occupant in the vehicle at the time of the accident capable of doing so, such occupant shall give or cause to be given the notice not given by the driver.

B. Whenever the driver is physically incapable of making a written report of an accident as required in Section 66-7-207 NMSA 1978 and such driver is not the owner of the vehicle, then the owner of the vehicle involved in such accident shall within five days after learning of the accident make such report not made by the driver.

**History:** 1953 Comp., § 64-7-208, enacted by Laws 1978, ch. 35, § 397.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Construction and application of "amnesty" provision whereby automobile driver leaving scene of accident may report to police within stated time without risk of use of his report against him, 36 A.L.R.4th 907.

## 66-7-209. Accident report form.

A. The state highway and transportation department shall prepare and, upon request, supply to police departments, district medical investigators, sheriffs, garages and other suitable agencies or individuals forms for accident reports required under Section 66-7-207 NMSA 1978 appropriate with respect to the persons required to make the reports and the purposes to be served. The written reports to be made by persons involved in accidents and by investigating officers shall call for sufficiently detailed information to disclose with reference to a traffic accident the cause, conditions then existing and the persons and vehicles involved. The report of the investigating officer shall also state whether the persons involved in the accident have motor vehicle or automobile liability insurance and the name and address of each insurance carrier.

B. Every accident report required to be made in writing shall be made on an appropriate form approved by the state highway and transportation department in conjunction with the state police division of the public safety department and shall contain all of the information required on the form unless not available.

C. Every accident report shall also contain information sufficient to enable the state highway and transportation department to determine whether the requirements for the deposit of security under any of the laws of this state are inapplicable by reason of the existence of insurance or other exceptions specified therein.

**History:** 1953 Comp., § 64-7-209, enacted by Laws 1978, ch. 35, § 398; 1989, ch. 318, § 24.

**ANNOTATIONS**

**Cross references.** — For the Financial Responsibility Act, *see* 66-5-201 NMSA 1978 et seq.

**The 1989 amendment,** effective July 1, 1989, substituted "state highway and transportation department" for "division" in Subsections A and B; in Subsection A substituted "district medical investigators" for "coroners" near the beginning of the first sentence, and "66-7-207 NMSA 1978" for "64-7-207 NMSA 1953" near the middle of that sentence; in Subsection B inserted "in conjunction with the state police division of the public safety department" and made a minor stylistic change; and in Subsection C substituted "state highway and transportation department" for "director".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 60 C.J.S. Motor Vehicles § 43.

## 66-7-210. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1989, ch. 318, § 37 repealed 66-7-210 NMSA 1978, as enacted by Laws 1978, ch. 35, § 399, relating to penalty for failure to report and false reports, effective July 1, 1989.

## 66-7-211. District medical investigators to report.

Every district medical investigator or other official performing like functions shall, on or before the tenth day of each month, report in writing to the state highway and transportation department the death of any person within his jurisdiction during the preceding calendar month as the result of a traffic accident, giving the time and place of the accident and the circumstances relating to the accident.

**History:** 1953 Comp., § 64-7-211, enacted by Laws 1978, ch. 35, § 400; 1989, ch. 318, § 25.

**ANNOTATIONS**

**The 1989 amendment,** effective July 1, 1989, substituted "District medical investigators" for "Coroners" in the catchline, "district medical investigator" for "coroner" near the beginning of the section, and "state highway and transportation department" for "division" near the middle of the section, and made minor stylistic changes near the end of the section.

## 66-7-212. Garages, dealers and wreckers of vehicles to report.

The person in charge of any garage or repair shop and dealers or wreckers of vehicles to whom is brought any motor vehicle which shows evidence of having been involved in an accident of which report must be made as provided in Section 66-7-207 NMSA 1978 or struck by any bullet shall report to the state highway and transportation department within twenty-four hours after the motor vehicle is received, giving the engine number, registration number and the name and address of the owner or operator of the vehicle.

**History:** 1953 Comp., § 64-7-212, enacted by Laws 1978, ch. 35, § 401; 1989, ch. 318, § 26.

**ANNOTATIONS**

**Cross references.** — For the definitions of "dealer", *see* 66-1-4.4 NMSA 1978.

**The 1989 amendment,** effective July 1, 1989, substituted "66-7-207 NMSA 1978" for "64-7-207 NMSA 1953" and "state highway and transportation department" for "division", and made minor stylistic changes.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 61A C.J.S. Motor Vehicles § 717.

## 66-7-213. Accident reports confidential; exceptions.

A. All accident reports made by persons involved in accidents or by persons in charge of garages shall be without prejudice to the individual so reporting and shall be for the confidential use of the state highway and transportation department or other state agencies having use for the records for accident prevention purposes or for the administration of the laws of this state relating to the deposits of security and proof of financial responsibility by persons driving or the owners of motor vehicles, except that the state highway and transportation department may disclose:

(1) the identity of a person involved in an accident when his identity is not otherwise known or when the person denies his presence at the accident; or

(2) the fact that the owner or operator of a motor vehicle involved in the accident is or is not insured and if he is insured the name and address of his insurance carrier.

B. Except as otherwise provided in this section, no accident report shall be used as evidence in any trial, civil or criminal, arising out of an accident.

C. The state highway and transportation department shall furnish upon demand of any person who has or claims to have made a report or upon demand of any court a certificate showing that a specified accident report has or has not been made to the state highway and transportation department solely to prove a compliance or a failure to comply with the requirement that a report be made to the state highway and transportation department.

D. A certified copy of the investigating officer's accident report may be introduced into evidence in any arbitration or civil action involving the insurer's liability under a motor vehicle or automobile liability policy containing uninsured motorist coverage as required by Section 66-5-301 NMSA 1978 to prove that the owner or operator of the other motor vehicle involved in the accident is either insured or uninsured. The investigating agency shall furnish a certified copy of the investigating officer's accident

report to either party to the arbitration or civil action or to the court on request. The certified copy of the investigating officer's report is prima facie evidence that the owner or operator of the other motor vehicle is either insured or uninsured.

**History:** 1953 Comp., § 64-7-213, enacted by Laws 1978, ch. 35, § 402; 1989, ch. 318, § 27.

## ANNOTATIONS

**Cross references.** — For the financial responsibility provisions, *see* 66-5-201 NMSA 1978 et seq.

**The 1989 amendment,** effective July 1, 1989, inserted "persons in charge of" near the beginning of the introductory paragraph of Subsection A, substituted "state highway and transportation department" for "division" several times in Subsections A and C, and in Subsection D substituted "66-5-301 NMSA 1978" for "64-5-301 NMSA 1953" in the first sentence and "investigating agency" for "division" in the second sentence.

**Reports made confidential limited to persons involved or garages.** — Since the reports made confidential are limited to those made by persons involved in accidents or by garages, the reports made by police officers regarding an accident would not be considered confidential and would be subject to inspection by persons interested. 1953 Op. Att'y Gen. No. 53-5840.

**Police officer's accident reports considered public records.** — Accident reports made by police officers as a part of their regular course of duty are considered public records. 1959 Op. Att'y Gen. No. 59-213.

**Procurement of accident reports by an insurance adjuster constitutes a lawful purpose** and one may not restrict the furnishing of these reports to only the parties involved or their attorneys. 1959 Op. Att'y Gen. No. 59-213.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 289.

Admissibility of report of police or other public officer or employee, or portions of report, as to cause of or responsibility for accident, injury to person, or damage to property, 69 A.L.R.2d 1148.

Admissibility of police officer's testimony at state trial relating to motorist's admissions made in or for automobile accident report required by law, 46 A.L.R.4th 291.

Discoverability of traffic accident reports and derivative information, 84 A.L.R.4th 15.

60 C.J.S. Motor Vehicles § 43.

## 66-7-214. Agency to tabulate and analyze accident reports.

The state highway and transportation department shall tabulate and may analyze all accident reports and shall publish annually or at more frequent intervals statistical information based thereon as to the number and circumstances of traffic accidents.

**History:** 1941 Comp., § 68-2314, enacted by Laws 1953, ch. 139, § 51; 1953 Comp., § 64-17-14; recompiled as 1953 Comp., § 64-7-214, by Laws 1978, ch. 35, § 403; 1989, ch. 318, § 28.

**ANNOTATIONS**

**The 1989 amendment,** effective July 1, 1989, substituted "Agency" for "Division" in the catchline and "state highway and transportation department" for "division" near the beginning of the section.

## 66-7-215. Any incorporated city may require accident reports.

Any incorporated city, town, village or other municipality may by ordinance require that the driver of a vehicle involved in an accident shall also file with a designated city department a report of such accident or a copy of any report herein required to be filed with the division. All such reports shall be for the confidential use of the city department and subject to the provisions of Section 66-7-213 NMSA 1978.

**History:** 1953 Comp., § 64-7-215, enacted by Laws 1978, ch. 35, § 404.

# PART 4
# TRAFFIC LAWS GENERALLY

## 66-7-301. Speed regulation.

A. No person shall drive a vehicle on a highway at a speed greater than:

(1) fifteen miles per hour on all highways when passing a school while children are going to or leaving school and when the school zone is properly posted;

(2) thirty miles per hour in a business or residence district;

(3) fifty-five miles per hour on a county road, as defined in Section 66-7-304 NMSA 1978, without a posted speed limit;

(4) seventy-five miles per hour; and

(5) the posted speed limit in construction zones posted as double fine zones or other safety zones posted as double fine zones as designated by the department of

transportation; provided that the posted speed limit shall be determined by an engineering study performed by the department of transportation.

B. In every event, speed shall be so controlled by the driver as may be necessary:

(1) to avoid colliding with a person, vehicle or other conveyance on or entering the highway;

(2) to comply with legal requirements as may be established by the department of transportation or the New Mexico state police division of the department of public safety and the duty of all persons to use due care; and

(3) to protect workers in construction zones posted as double fine zones or other safety zones posted as double fine zones as designated by the department of transportation.

C. The speed limits set forth in Subsection A of this section may be altered as authorized in Section 66-7-303 NMSA 1978.

**History:** 1953 Comp., § 64-7-301, enacted by Laws 1978, ch. 35, § 405; 1985, ch. 188, § 1; 1989, ch. 318, § 29; 1989, ch. 320, § 1; 1996, ch. 81, § 2; 2002, ch. 71, § 1; 2015, ch. 45, § 1.

## ANNOTATIONS

## ANNOTATIONS

**Cross references.** — For provisions that references to English measurement units also refer to equivalent metric units, *see* 66-1-5 NMSA 1978.

For construction zones, *see* 66-7-303.1 NMSA 1978.

For the penalty assessment for violation, *see* 66-8-116 NMSA 1978.

**The 2015 amendment,** effective January 1, 2016, limited the speed limit to fifty-five miles per hour on county roads that do not have a posted speed limit; in Subsection A, added Paragraph (3) and renumbered the succeeding paragraphs accordingly; in Paragraph (5), after "designated by the", deleted "highway and transportation", after the first occurrence of "department", added "of transportation", after "performed by the", deleted "state highway and transportation", and after the second occurrence of "department", added "of transportation"; in Subsection B, Paragraph (2), after "established by the", deleted "state highway and transportation", and after the first occurrence of "department", added "of transportation"; and in Subsection B, Paragraph (3), after "designated by the", deleted "highway and transportation", and after "department", added "of transportation".

**The 2002 amendment,** effective May 15, 2002, inserted "posted as double fine zones or other safety zones posted as double fine zones as designated by the highway and transportation department" in Subsections A(4) and B(3).

**The 1996 amendment,** effective May 15, 1996, in Subsection A, added Paragraph (3), deleted former Paragraphs (3) and (4) relating to speed limits on urban interstate highways which are part of the national system of interstate and defense highways, and resdesignated former Paragraph (5) as Paragraph (4); deleted former Subsection B which pertained to the maximum speed limits established in former Paragraphs A(3) and A(4), and redesignated the following subsections accordingly; and made a stylistic change in Paragraph (2) of Subsection B.

**The 1989 amendment,** effective July 1, 1989, rewrote the section.

## I. GENERAL CONSIDERATION.

**Proof of posted speed limits.** — A prima facie case for a speeding violation is established when the state presents evidence that the speed limit was posted on a visible sign along the roadway, giving drivers proper notice of the designated speed limit, and a driver exceeds the posted speed limit. *State v. Tarin*, 2014-NMCA-080.

Where defendant was cited for speeding while traveling at a speed of seventy-one miles per hour in a posted forty-five miles per hour speed limit zone; the location was not in a school zone, a business district, a residential district or a construction zone; and defendant claimed that the state failed to present sufficient evidence that the speed limit was forty-five miles per hour because the state failed to produce an engineering survey and traffic investigation set forth in 66-7-303(A) NMSA 1978 to prove that the legally enforceable speed limit of seventy-five miles per hour set forth in 66-7-301(A)(3) NMSA 1978 had been reduced to forty-five miles per hour, the state was not required to present an engineering survey and traffic investigation as a prima facie element in the charge of speeding, the posted speed limit of forty-five miles per hour was sufficient to establish the statutory speed limit under 66-7-301 NMSA 1978. *State v. Tarin*, 2014-NMCA-080.

Where defendant was cited for speeding while traveling at a speed of seventy-one miles per hour in a posted forty-five miles per hour speed limit zone; the citing officer testified that the officer had patrolled and passed through the area numerous times and had personal knowledge of the posted speed limit, the officer observed defendant coming around a curve at a high rate of speed, the officer used a radar device to clock defendant’s speed at seventy-one miles per hour, and the posted speed limit was forty-five miles per hour; the officer described three places in the area where signs were posted stating that the speed limit was forty-five miles per hour; and defendant claimed that the officer’s evidence was insufficient to prove the speed limit because the officer did not have personal knowledge that the speed limit was forty-five miles per hour and that the officer’s testimony was based on lack of personal knowledge and inadmissible hearsay, the state presented sufficient evidence that the posted speed limit was forty-

five miles per hour and the defendant was traveling in excess of the posted limit. *State v. Tarin*, 2014-NMCA-080.

**Application to "business or residence" district.** — Section 66-7-301(A)(2) NMSA 1978 applies to districts that are residential in nature or zoning, or business in nature or zoning, or have the characteristics of, and are zoned for, both types of uses. *State v. Moseley*, 2014-NMCA-033, cert. denied, 2014-NMCERT-002.

Where defendant was driving at a speed of thirty-five miles per hour in an area that contained both residences and businesses; no speed limit signs were posted in the area; and the district court held that the thirty mile per hour speed limit in Section 66-7-301(A)(2) NMSA 1978 applies only if an area is either exclusively residential in nature or exclusively business in nature, defendant was not speeding at the time of the stop, and the officer who stopped defendant did not have reasonable suspicion for the stop, the district court's interpretation of Section 66-7-301(A)(2) NMSA 1978 was not consistent with the intent of the legislature that the statute apply in mixed residential and business areas, as well as in exclusively residential and exclusively business areas. *State v. Moseley*, 2014-NMCA-033. cert. denied, 2014-NMCERT-002.

**Speeding and running stop sign are different offenses** with different penalties. *United States v. Clemente E.*, 392 F.3d 1164 (10th Cir. 2004).

**Stop sign does not create a "speed limit".** *United States v. Clemente E.*, 392 F.3d 1164 (10th Cir. 2004).

**Altered speed becomes speed limit after alteration.** — Sections 64-18-1.1, 1953 Comp. (similar to this section) and 66-7-303 NMSA 1978 authorize the alteration of speed limits. The altered speed then becomes the speed limit. *Dahl v. Turner*, 1969-NMCA-075, 80 N.M. 564, 458 P.2d 816, cert. denied, 80 N.M. 608, 458 P.2d 860.

**Speed limit sign is effective at the point where the sign is located.** — Where defendant was convicted of speeding for driving 55 miles per hour in a posted 45 mile-per-hour speed zone, and where defendant argued that speed limit statutes should be construed to allow motorists to accelerate in advance of an increased speed limit sign once the sign is visible, defendant's conviction was proper, because the plain language of 66-7-303(B) NMSA 1978 indicates that a speed limit is effective at the point where the sign is located and continues to be in effect until it ends at the next different speed limit sign. *State v. Martinez*, 2019-NMCA-049.

**The district court did not abuse its discretion in finding that radar evidence was admissible without requiring expert testimony.** — Where defendant was charged with speeding, and where defendant argued that the state failed to present an adequate scientific foundation to establish the reliability of the radar technology used to determine his speed, the district court did not abuse its discretion in admitting evidence of defendant's speed because radar technology has generally been accepted as reliable

and the state established a proper foundation for the accuracy of the particular radar unit used in this case. *State v. Garcia*, 2020-NMCA-004.

**Court acquired jurisdiction over speeding prosecution** even though the citation was not made under oath and the complaint failed to allege the speed and speed limit and that the appellant was the person who committed the offense. *State v. Mesecher*, 1964-NMSC-211, 74 N.M. 510, 395 P.2d 233.

## II. SCHOOL ZONES.

**Provision applies to children under 18 years old.** — Section 64-18-1.1, 1953 Comp., applies to children who are under 18 years of age. The speed limit of 15 m.p.h. would apply "while children [under the age of 18 years] are going to, or leaving school, and when the school zone is properly posted." *Weiland v. Vigil*, 1977-NMCA-003, 90 N.M. 148, 560 P.2d 939, cert. denied, 90 N.M. 255, 561 P.2d 1348 (rendered under prior law).

**Posting of school zone sign is condition precedent** to establishment of a school zone. *Weiland v. Vigil*, 1977-NMCA-003, 90 N.M. 148, 560 P.2d 939, cert. denied, 90 N.M. 255, 561 P.2d 1348.

## III. NEGLIGENCE.

### A. DUE CARE.

**Due care not obviated merely because not exceeding limit.** — Even though motorist was not exceeding speed limit, need for the exercise of due care was not thereby obviated, particularly in view of statutory provision that automobile should only be operated at such speed as was consistent with safety and proper use of the highways. *Langenegger v. McNally*, 1946-NMSC-017, 50 N.M. 96, 171 P.2d 316.

**Due care not obviated because driver has right-of-way.** — Fact that right-of-way was in plaintiff's favor did not obviate duty of plaintiff's exercising due care when defendant motorist entered intersection while plaintiff was still some 200 feet away. *Langenegger v. McNally*, 1946-NMSC-017, 50 N.M. 96, 171 P.2d 316.

**Traveling five m.p.h. through yellow flashing light intersection not negligence.** — Two trucks approximately 100 yards from an intersection were traveling 35 to 40 m.p.h. and were slowing down so that by the time the trucks reached the intersection (controlled by a yellow flashing light) one truck was going five m.p.h. and the other slightly faster. These facts show neither a lack of ordinary care nor speed amounting to a failure to use due care in violation of Section 64-18-1.1, 1953 Comp. (similar to this section). *Butcher v. Safeway Stores, Inc.*, 1967-NMCA-029, 78 N.M. 593, 435 P.2d 212.

**Not slowing or stopping not failure to exercise ordinary care.** — Where automobile was being driven between 40 or 45 m.p.h. at night and driver, on seeing an approaching

truck which did not attempt to keep a straight course, but meandered and weaved, and did not dim light, dimmed the lights on his automobile and pulled over to the right in order to give the truck all of the room possible, it cannot be said that the driver of such automobile failed to exercise ordinary care in not slowing or stopping his automobile. *Cain v. Bowlby*, 114 F.2d 519 (10th Cir.), cert. denied, 311 U.S. 710, 61 S. Ct. 319, 85 L. Ed. 462 (1940).

**Not error to find excessive speed even when within limit.** — A finding that motorist was traveling too fast may not be erroneous even though he was not driving in excess of the speed limit. *Langenegger v. McNally*, 1946-NMSC-017, 50 N.M. 96, 171 P.2d 316.

**Motorists held to see what person exercising due care sees.** — Motorists are responsible for seeing that which a reasonably prudent person, exercising due care, should have seen. Failure properly to evaluate what is seen is as much an element of negligent lookout as not to see the course of danger at all. A motorist must exercise care commensurate with the situation confronting him. *Horrocks v. Rounds*, 1962-NMSC-048, 70 N.M. 73, 370 P.2d 799.

**Negligence to fail to be able to avoid discernible obstruction.** — Failure of driver to operate vehicle at such a speed that it can be stopped in time to avoid an obstruction discernible within his length of vision ahead of him may constitute negligence. *Duncan v. Madrid*, 1940-NMSC-027, 44 N.M. 249, 101 P.2d 382; *Lopez v. Townsend*, 1938-NMSC-058, 42 N.M. 601, 82 P.2d 921.

**Jury question whether speed was too great to avoid collision.** — Defendant, having difficulty seeing the road because of the snow, traveled about 25 to 30 feet behind plaintiff's car. Plaintiff's car traveled over into the oncoming lanes of traffic and when she saw this she brought her car to a stop. Defendant saw no brake lights and was unable to stop his car. These facts created a jury question on issue of defendant's negligence (going too fast) or plaintiff's contributory negligence (improper stopping). *Tafoya v. Whitson*, 1971-NMCA-098, 83 N.M. 23, 487 P.2d 1093, cert. denied, 83 N.M. 22, 487 P.2d 1092.

**"Unavoidable accident" is an accident not occasioned in any degree,** either directly or remotely, by want of such care or prudence as the law holds every man bound to exercise; and if the accident complained of could have been prevented by either party by means suggested by common prudence, it is not unavoidable. *Horrocks v. Rounds*, 1962-NMSC-048, 70 N.M. 73, 370 P.2d 799.

## B. PER SE.

**Negligence per se to operate vehicle at prohibited speed.** — Operation of an automobile at a speed prohibited by statute or ordinance is negligence per se. *Clay v. Texas-Arizona Motor Freight, Inc.*, 1945-NMSC-023, 49 N.M. 157, 159 P.2d 317.

**Exceeding speed limit does not mandate finding of negligence.** — The fact that the defendant was exceeding the speed limit does not mandate or preclude a finding of negligence. *Marcus v. Cortese*, 1982-NMCA-090, 98 N.M. 414, 649 P.2d 482.

**Operating truck at speed in violation of statute** constituted negligence per se. *H.W. Bass Drilling Co. v. Ray*, 101 F.2d 316 (10th Cir. 1939).

**One who violates statute is negligent as matter of law,** unless excused from such violation. *Dahl v. Turner*, 1969-NMCA-075, 80 N.M. 564, 458 P.2d 816, cert. denied, 80 N.M. 608, 458 P.2d 860.

**Failure to reduce speed to statutory requirement constituted negligence per se** in case where truck brakes were insufficient to slow truck on downhill and truck ran into roadblock, even though government was assumed guilty of negligence for posting insufficient warning. *United States v. Byers*, 225 F.2d 774 (10th Cir. 1955).

**Proof of statute violation is one method of proving negligence.** — Proof of violation of a statute is one method of proving negligence. *Dahl v. Turner*, 1969-NMCA-075, 80 N.M. 564, 458 P.2d 816, cert. denied, 80 N.M. 608, 458 P.2d 860.

**Driving in excess of limit establishes negligence due to speed.** — Facts establishing that defendant was driving in excess of the speed limit and that she failed to control her speed to avoid colliding with a pickup which was entering the highway is evidence of negligence due to speed. *Dahl v. Turner*, 1969-NMCA-075, 80 N.M. 564, 458 P.2d 816, cert. denied, 80 N.M. 608, 458 P.2d 860.

**Excessive speed not inferable from mere fact accident happened.** *Lopez v. Maes*, 1970-NMCA-084, 81 N.M. 693, 472 P.2d 658, cert. denied, 81 N.M. 721, 472 P.2d 984.

**Instruction of excessive speed not given when no evidence thereof.** *Embrey v. Galentin*, 1966-NMSC-191, 76 N.M. 719, 418 P.2d 62.

**"Rule of reason" criminal statute sufficiently definite.** — A statute defining what some courts refer to as a "rule of reason" in making it a crime to drive an automobile in such an uncontrolled manner as to collide with some object, including the roadbed, and making it a crime to operate a motor vehicle without due care, is sufficiently definite to apprise the defendant of the charges against him when he is complained against under such a statute. 1959 Op. Att'y Gen. No. 59-148.

**Violation is offense against public health and safety.** — Section 64-18-1.1, 1953 Comp. (similar to this section) meets more than the minimal requirements for definiteness. 1959 Op. Att'y Gen. No. 59-154.

**Cannot prosecute if both offenses grant concurrent jurisdiction.** — The offense of failure to use due care is considered a lesser offense and that of reckless driving is considered a greater offense, such that if there is concurrent jurisdiction over either

offense, prosecution for one would be a bar to prosecution for the other, assuming that both are misdemeanors, with either a justice court (now magistrate court) or a district court able to exercise jurisdiction. 1964 Op. Att'y Gen. No. 64-147.

**Truck speed limit formerly based on manufacturer's rated capacity.** — The former language of Section 64-18-1.1, 1953 Comp. is clear and unambiguous. It sets a speed limit on trucks based on the manufacturer's rated capacity of the vehicle. No reference is made in the statute to the overall weight or size of the unit, nor is any distinction made as to trucks and trailers. All trucks of a rated capacity of less than two tons may operate on highways in open country during the day at a speed of 70 miles per hour regardless of the weight or size of the overall unit. 1957 Op. Att'y Gen. No. 57-194 (rendered under prior law).

**School authorities responsible for placing and removing signs.** — The responsibility for placing and removing the signs provided for is squarely upon the school authorities. It should be brought to their attention that these signs may be upon the streets only at certain times throughout the day and that they should be removed when not authorized. 1955 Op. Att'y Gen. No. 55-6297 (rendered under prior law).

**Failure to use due care even if not exceeding limit.** — A charge of failure to use due care can be made even though the driver was not exceeding a posted speed limit and even though no accident resulted from such overt actions. 1964 Op. Att'y Gen. No. 64-147.

**Facts justifying reckless driving charge also sustain due care failure.** — If the facts of a particular case could justify filing of a charge of reckless driving, the facts necessary to sustain a charge of failure to use due care would also be present so that either charge would be justified. 1964 Op. Att'y Gen. No. 64-147.

**Person may be cited for failure to use due care.** — A person can validly be cited, under Section 64-18-1.1, 1953 Comp. (similar to this section), for failure to use due care, provided that the act or acts constituting the offense are set out in the complaint. 1964 Op. Att'y Gen. No. 64-147.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 218, 317.

Custom or practice of motor vehicles as affecting question of negligence as regards speed, 77 A.L.R.2d 1327.

Duty of motor vehicle driver approaching place where children are playing or gathered, 30 A.L.R.2d 5.

Application of "assured clear distance ahead" or "radius of lights" doctrine to accident involving pedestrian crossing street or highways, 31 A.L.R.2d 1424.

Meaning of "residence district," "business district," "school area," and the like, in statutes and ordinances regulating speed of motor vehicles, 50 A.L.R.2d 343.

What amounts to reckless driving of motor vehicle within statute making such a criminal offense, 52 A.L.R.2d 1337.

Instructions to jury as to unavoidable accident involving speed of automobile, 65 A.L.R.2d 12.

Construction, application and effect, in civil motor vehicle accident cases, of "slow speed" traffic statutes prohibiting driving at such a slow speed as to create danger, 66 A.L.R.2d 1194.

Contributory negligence in riding or driving with insufficient or no lights as affected by speed of automobile, 67 A.L.R.2d 118, 62 A.L.R.3d 560, 62 A.L.R.3d 771, 62 A.L.R.3d 844.

Indefiniteness of automobile speed regulations as affecting validity, 6 A.L.R.3d 1326.

Speeding prosecution based on observation from aircraft, 27 A.L.R.3d 1446.

Competency of nonexpert's testimony, based on sound alone, as to speed of motor vehicle involved in accident, 33 A.L.R.3d 1405.

Motor vehicle operator's liability for accident occurring while driving with vision obscured by smoke or steam, 32 A.L.R.4th 933.

61A C.J.S. Motor Vehicles §§ 641 to 650.

Admissibility into evidence, in civil action, of tachograph or similar paper or tape recording of speed of motor vehicle, railroad locomotive, or the like. 18 A.L.R.6th 613.

## 66-7-302. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1989, ch. 318, § 37 and Laws 1989, ch. 319, § 15 repealed 66-7-302 NMSA 1978, as amended by Laws 1987, ch. 73, § 1, relating to maximum speed limit, effective July 1, 1989.

**Compiler's notes.** — Laws 1989, ch. 320, § 2 purported to amend this section, as amended by Laws 1987, ch. 73, § 1, but, because of the earlier repeal by Laws 1989, ch. 318, § 37 and Laws 1989, ch. 319, § 15, that amendment could not be given effect. For present comparable provisions, *see* 66-7-302.1 NMSA 1978.

## 66-7-302.1. Speed limit; conviction; use limited.

A. The division shall not use a violation of Section 66-7-301 NMSA 1978, where the posted speed limit is designated as fifty-five or sixty-five miles an hour, for the purpose of suspending or revoking a driver's license unless the driver was exceeding the speed of seventy-five miles an hour.

B. An insurer shall not consider a violation of Section 66-7-301 NMSA 1978, where the posted speed limit is designated as fifty-five or sixty-five miles an hour, as a moving traffic violation against a person unless the person was exceeding the speed of seventy-five miles an hour for the purpose of establishing rates of motor vehicle insurance charged by the insurer, and the insurer shall not cancel or refuse to renew any policy of insurance for such a violation.

**History:** 1978 Comp., § 66-7-302.1, enacted by Laws 1989, ch. 318, § 30 and Laws 1989, ch. 319, § 8; 1991, ch. 55, § 1; 2013, ch. 31, § 1.

**ANNOTATIONS**

**The 2013 amendment,** effective July 1, 2013, limited the use of speeding violations where the posted speed is between fifty-five and sixty-five miles an hour; in Subsection A, after "shall not use a violation", deleted "under Paragraph (3) or (4) of Subsection A" and after "Section 66-7-301 NMSA 1978", added "where the posted speed limit is designated as fifty-five or sixty-five miles an hour"; and in Subsection B, after "shall not consider a violation", deleted "under Paragraph (3) or (4) of Subsection A" and after "Section 66-7-301 NMSA 1978", added "where the posted speed limit is designated as fifty-five or sixty-five miles an hour".

**The 1991 amendment,** effective June 14, 1991, substituted "seventy-five miles per hour" for "seventy miles per hour" in Subsections A and B.

## 66-7-302.2. Certain speeding convictions to be disregarded in the development or application of a point system.

A. Except as provided in Subsection B of this section, in developing and applying a point system that is used as a basis for suspension or revocation of driving privileges, the division shall not assign points for convictions for speeding on rural highways of the state. As used in this section, "rural highway" means that part of a highway that is located at least two miles outside of the boundaries of an incorporated city, town or village. The two-mile distance shall be measured:

(1) from the point where the highway crosses the boundary, and if there is more than one such intersection, from the intersection most distant from the geographic center of the city, town or village; or

(2) if there are milepost markers on the highway, to the first milepost marker indicating two or more miles.

B. The provisions of this section do not apply to:

(1) rural highways in Bernalillo county;

(2) a conviction for speeding if the citation out of which the conviction arises indicated that excessive speed of the motorist cited was a factor in the accident; or

(3) motor vehicles weighing twelve thousand pounds or more.

**History:** Laws 2002, ch. 71, § 3.

**ANNOTATIONS**

**Effective dates.** — Laws 2002, ch. 71 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 15, 2002, 90 days after adjournment of the legislature.

## 66-7-303. Establishment of speed zones.

A. Whenever the secretary of highway and transportation determines upon the basis of an engineering survey and traffic investigation, a detailed report of which is filed with the traffic safety bureau of the state highway and transportation department, that any speed established by law is greater or less than is reasonable or safe under the conditions found to exist upon any part of a state highway, the secretary of highway and transportation may declare the speed limit for that part, and that speed limit shall be authorized and effective when appropriate signs giving notice thereof are erected at that particular part of the highway; provided that no speed limit shall be declared greater than seventy-five miles per hour. The declaration of speed limits by the secretary of highway and transportation shall not be considered rules for purposes of the State Rules Act [Chapter 14, Article 4 NMSA 1978].

B. Whenever a local authority determines upon the basis of an engineering survey and traffic investigation that any speed limit permitted under state law or local ordinance is greater or less than is reasonable or safe under the conditions found to exist upon any part of a highway within its jurisdiction, it may declare a speed limit for that part, and that speed limit shall be authorized and effective when appropriate signs giving notice thereof are erected at that particular part of the highway; provided that no speed limit shall be declared greater than seventy-five miles per hour.

C. Engineering surveys and traffic investigations made by local authorities shall be on a form approved by the secretary of highway and transportation. If engineers are not available to the local authorities, the state highway and transportation department may make the surveys and investigations for the local authorities.

D. Speed zones may be marked by a sign containing a flashing yellow light and, when the light is in operation, the speed limit, instructions or regulations on the sign are in effect.

E. Alteration of speed limits on state highways by local authorities is not effective until approved by the secretary of highway and transportation.

F. The provisions of Subsections A and B of this section shall not apply to changes of speed limit in construction zones authorized pursuant to Section 66-7-303.1 NMSA 1978.

**History:** 1953 Comp., § 64-18-2.1, enacted by Laws 1957, ch. 73, § 2; 1963, ch. 145, § 2; recompiled as 1953 Comp., § 64-7-303, by Laws 1978, ch. 35, § 407; 1985, ch. 188, § 2; 1996, ch. 81, § 3.

**ANNOTATIONS**

**Cross references.** — For the appointment of secretary of transportation, *see* 67-3-7 and 67-3-23 NMSA 1978.

**The 1996 amendment,** effective May 15, 1996, substituted the references to highway and transportation for references to state highway commission, rewrote Subsections A and B, and made stylistic changes throughout the section.

**Altered speed becomes speed limit after alteration.** — Section 64-18-1.1, 1953 Comp. (similar to Section 66-7-301 NMSA 1978) and this section authorize the alteration of speed limits. The altered speed then becomes the speed limit. *Dahl v. Turner*, 1969-NMCA-075, 80 N.M. 564, 458 P.2d 816, cert. denied, 80 N.M. 608, 458 P.2d 860.

**Speed limit sign is effective at the point where the sign is located.** — Where defendant was convicted of speeding for driving 55 miles per hour in a posted 45 mile-per-hour speed zone, and where defendant argued that speed limit statutes should be construed to allow motorists to accelerate in advance of an increased speed limit sign once the sign is visible, defendant's conviction was proper, because the plain language of 66-7-303(B) NMSA 1978 indicates that a speed limit is effective at the point where the sign is located and continues to be in effect until it ends at the next different speed limit sign. *State v. Martinez*, 2019-NMCA-049.

## 66-7-303.1. Construction zones; traffic control devices; penalty.

A. When construction, repair or reconstruction of any street or highway is being done, the state highway department or the local authority with jurisdiction over that street or highway is authorized to designate as a construction zone that portion of the street or highway where construction, reconstruction or repair is being done and to

close the construction zone to traffic or to provide for a single lane of traffic on any two-lane or four-lane highway in the construction zone.

B. The state highway department or any local authority closing all or a portion of a street or highway or providing for a single lane of traffic on any two-lane or four-lane street or highway pursuant to Subsection A of this section shall erect or cause to be erected traffic-control devices or barricades to warn and notify the public of any change in speed limit and that such street or highway is closed or limited to a single lane of traffic.

C. Every pedestrian or person who operates a vehicle on any street or highway shall obey all signs, signals, markings, flagmen or other traffic-control devices that are placed to regulate, control and guide traffic through a construction zone.

D. No person shall remove, change, modify, deface or alter any traffic-control device or barricade which has been erected on any street or highway pursuant to this section.

E. Any person who violates any provision of Subsection C or D of this section is guilty of a misdemeanor and upon conviction shall be sentenced in accordance with Section 66-8-7 NMSA 1978.

**History:** Laws 1985, ch. 188, § 3; 1991, ch. 192, § 5.

**ANNOTATIONS**

**Cross references.** — For the state highway department, *see* 67-3-6 NMSA 1978.

**The 1991 amendment,** effective June 14, 1991, substituted "sentenced in accordance with Section 66-8-7 NMSA 1978" for "punished by a fine not to exceed two hundred dollars ($200) or imprisonment in the county jail for a term not to exceed thirty days or both" at the end of Subsection E and made minor stylistic changes in Subsection C.

## 66-7-304. County roads; authority to regulate speed limits.

A. The board of county commissioners of a county may alter and establish speed limits lower than those established by law on county roads within its county, provided that:

(1) the speed limit is deemed to be reasonable and safe under local conditions on the basis of an engineering survey and traffic investigation;

(2) the alteration of a speed limit is approved by the state transportation commission; and

(3) the county posts speed limit signs that conform to the specifications as set forth in the manual adopted by the state transportation commission before enforcing the speed limit.

B. As used in this section, "county roads" means any streets, roads or highways built and maintained by the county or the control of which has been given to the county by the state transportation commission.

**History:** 1953 Comp., § 64-7-304, enacted by Laws 1978, ch. 35, § 408; 2003, ch. 142, § 14.

**ANNOTATIONS**

**Cross references.** — For the adoption of a manual and specifications for a uniform system of traffic-control devices, *see* 66-7-101 NMSA 1978.

**The 2003 amendment,** effective July 1, 2003, added "deemed to be" preceding "reasonable" in Paragraph A(1) and substituted "transportation commission" for "highway commission" in Paragraphs A(2), A(3) and Subsection B.

## 66-7-305. Minimum speed regulation.

A. A person shall not drive a motor vehicle at such a slow speed as to impede the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or to be in compliance with law.

B. Whenever the state transportation commission or local authorities within their respective jurisdictions determine on the basis of an engineering and traffic investigation that slow speeds on any part of a highway consistently impede the normal and reasonable movement of traffic, the commission or the local authority may determine and declare a minimum speed limit below which no person shall drive a vehicle except when necessary for safe operation or to be in compliance with law; provided that local authorities in municipalities of more than one hundred thousand population may prohibit vehicles that by virtue of weight or design are slow moving on local arterials during peak hours of traffic.

**History:** 1953 Comp., § 64-7-305, enacted by Laws 1978, ch. 35, § 409; 2003, ch. 142, § 15.

**ANNOTATIONS**

**Cross references.** — For the penalty assessment for violation, *see* 66-8-116 NMSA 1978.

**The 2003 amendment,** effective July 1, 2003, substituted "transportation commission" for "highway commission" in Subsection B.

**Traffic stop was justified.** — Police officer had probable cause to stop defendant for impeding traffic where defendant was traveling 35 miles per hour in a 55 miles per hour zone while occupying the inside traffic lane. *State v. Mann*, 1985-NMCA-107, 103 N.M. 660, 712 P.2d 6, cert. denied, 103 N.M. 740, 713 P.2d 556 (1986).

**Traffic stop not justified.** — Police officer lacked probable cause to stop defendant for impeding traffic where defendant was traveling 45 miles per hour in a 55 miles per hour zone. *U.S. v. Valadez-Valadez*, 525 F.3d 987 (10th cir. 2008).

**Violation is proper question for jury.** — Violations of Section 64-18-4, 1953 Comp. (similar to this section) (driving so slow as to impede traffic), 64-18-49, 1953 Comp. (similar to Section 66-7-349 NMSA 1978) (stopping on a highway) and 66-7-318 A NMSA 1978 (following too closely), which were enacted for the benefit of the public, were proper questions for jury. *Archuleta v. Johnston*, 1971-NMCA-158, 83 N.M. 380, 492 P.2d 997, cert. denied, 83 N.M. 379, 492 P.2d 996.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Civil cases involving law against slow speed, 66 A.L.R.2d 1194.

61A C.J.S. Motor Vehicles § 588.

## 66-7-306. Special speed limitations.

A. Subject to the requirements of Section 66-3-847 NMSA 1978, no person shall drive any vehicle equipped with solid rubber or cushion tires at a speed greater than ten miles per hour.

B. A person shall not drive a vehicle over any bridge or other elevated structure constituting a part of a highway at a speed that is greater than the maximum speed that can be maintained with safety to the bridge or structure when such structure is signposted as provided in this section.

C. The state transportation commission upon request from a local authority shall, or upon its own initiative may, conduct an investigation of any bridge or other elevated structure constituting a part of a highway, and if it finds that the structure cannot with safety to itself withstand vehicles traveling at the speed otherwise permissible under the Motor Vehicle Code, the commission shall determine and declare the maximum speed of vehicles that the structure can withstand and shall cause or permit suitable signs stating the maximum speed to be erected and maintained at a minimum distance of three hundred feet before each end of the structure.

D. Upon the trial of a person charged with a violation of this section, proof of determination of the maximum speed by the state transportation commission and the existence of suitable signs constitutes conclusive evidence of the maximum speed that can be maintained with safety to the bridge or structure.

**History:** 1953 Comp., § 64-7-306, enacted by Laws 1978, ch. 35, § 410; 2003, ch. 142, § 16.

**ANNOTATIONS**

**Cross references.** — For the penalty assessment for violation, *see* 66-8-116 NMSA 1978.

**The 2003 amendment,** effective July 1, 2003, rewrote the section heading; substituted "66-3-847 NMSA 1978" for "64-3-847 NMSA 1953" and deleted "a maximum of" preceding "ten miles per hour" in Subsection A; and substituted "transportation commission" for "highway commission" in Subsection C.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 60A C.J.S. Motor Vehicles § 246.

## 66-7-307. Charging violations; rule in civil actions.

A. In every charge of violation of any speed regulation under the Motor Vehicle Code [66-1-1 NMSA 1978], the complaint and the uniform traffic citation shall specify the speed at which the defendant is alleged to have driven and the maximum speed applicable within the district or at the location.

B. Provisions of the Motor Vehicle Code for maximum speed limitations shall not be construed to relieve the plaintiff in any civil action from the burden of proving negligence on the part of the defendant as the proximate cause of an accident.

**History:** 1941 Comp., § 68-2407, enacted by Laws 1953, ch. 139, § 62; 1953 Comp., § 64-18-7; Laws 1969, ch. 169, § 5; recompiled as 1953 Comp., § 64-7-307, by Laws 1978, ch. 35, § 411.

**ANNOTATIONS**

**Proof of violation of a statute is one method of proving negligence.** *Dahl v. Turner*, 1969-NMCA-075, 80 N.M. 564, 458 P.2d 816, cert. denied, 80 N.M. 608, 458 P.2d 860.

**Court acquired jurisdiction over speeding prosecution** even though citation was not made under oath and the complaint failed to allege the speed and speed limit and that the appellant was the person who committed the offense. *State v. Mesecher*, 1964-NMSC-211, 74 N.M. 510, 395 P.2d 233.

## 66-7-308. Drive on right side of roadway; exceptions.

A. Upon all roadways of sufficient width a vehicle shall be driven upon the right half of the roadway, and where practicable, entirely to the right of the center thereof, except as follows:

(1) when overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement;

(2) when the right half of a roadway is closed to traffic while under construction or repair;

(3) upon a roadway divided into three marked lanes for traffic under the rules applicable thereon; or

(4) upon a roadway designated and signposted for one-way traffic.

B. Upon all roadways any vehicle proceeding at less than the normal speed of traffic at the time and place and under the conditions then existing shall be driven in the right-hand lane then available for traffic, or as close as practicable to the right-hand curb or edge of the roadway, except when overtaking and passing another car proceeding in the same direction or when preparing for a left turn at an intersection or into a private road or driveway.

**History:** 1953 Comp., § 64-7-308, enacted by Laws 1978, ch. 35, § 412.

## ANNOTATIONS

**Cross references.** — For the penalty assessment for violation, *see* 66-8-116 NMSA 1978.

**Provision does not apply to one-car accident.** — The legislature did not explicitly state whom it sought to protect in Sections 64-18-8, 1953 Comp. (similar to this section) and 64-18-16, 1953 Comp. (similar to Section 66-7-317 NMSA 1978); it is doubtful that the provision could have been intended by the legislature to apply to a one-car accident of unknown cause in which driver and passenger were killed (regardless of the fact that evidence showed the car crossed into the left-hand lane before its final plunge). The district court properly refused to submit a negligence per se instruction based on these provisions to the jury. *Archibeque v. Homrich*, 1975-NMSC-066, 88 N.M. 527, 543 P.2d 820.

**No violation when on left side to avoid accident.** — Where inference possible from the testimony was that motorcyclist either slammed on the brakes which threw his motorcycle to the left because of slippery street or else that he attempted to turn with the other vehicle to avoid the impact, it does not follow that he had been traveling on the left side of the street. *White v. Montoya*, 1942-NMSC-031, 46 N.M. 241, 126 P.2d 471.

**Violation in dense fog is negligence per se.** — It is negligence per se for a motorist to drive on left side of highway in a dense fog. *Silva v. Waldie*, 1938-NMSC-048, 42 N.M. 514, 82 P.2d 282.

**Driving on wrong side on steep incline reckless.** — Inadvertently allowing an automobile to encroach upon the wrong side of the road while going up an incline so steep cars beyond its crest may not be seen constitutes a reckless, willful and wanton disregard of consequences to others, and will support conviction for manslaughter if one be killed as a result thereof. *State v. Rice*, 1954-NMSC-037, 58 N.M. 205, 269 P.2d 751.

**Evidence of lack of due care.** — Evidence that the northbound car traveled from the wrong side of the road, back to the right side, and then across to the wrong side again was evidence of lack of due care. Pavlos v. Albuquerque Nat'l Bank, 1971-NMCA-096, 82 N.M. 759, 487 P.2d 187, 56 A.L.R. 3d 558.

**Violation not proximate cause of injury as matter of law.** — A violation of Section 64-18-8, 1953 Comp. (similar to this section) does not necessarily justify the trial court in ruling as a matter of law that the violation was the proximate cause of the injury. *Martin v. Gomez*, 1961-NMSC-090, 69 N.M. 1, 363 P.2d 365.

**Violation is negligence as matter of law unless justified.** — Where there are facts showing a violation of Section 64-18-8, 1953 Comp. (similar to this section), such a violation is negligence as a matter of law where the violation was neither excused nor justified. *Paddock v. Schuelke*, 1970-NMCA-099, 81 N.M. 759, 473 P.2d 373.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 260.

Reciprocal rights, duties, and liabilities where motor vehicle, passing on left of other vehicle proceeding in same direction, cuts back to the right, 48 A.L.R.2d 232.

What amounts to reckless driving of motor vehicle within statute making such a criminal offense, 52 A.L.R.2d 1337.

Driving on wrong side of road with insufficient or no lights as contributory negligence, 67 A.L.R.2d 118, 62 A.L.R.3d 560, 62 A.L.R.3d 771, 62 A.L.R.3d 844.

60A C.J.S. Motor Vehicles §§ 274 to 283.

## 66-7-309. Passing vehicles proceeding in opposite direction [directions].

Drivers of vehicles proceeding in opposite directions shall pass each other to the right, and upon roadways having width for not more than one line of traffic in each direction each driver shall give to the other at least one-half of the main-traveled portion of the roadway as nearly as possible.

**History:** 1941 Comp., § 68-2409, enacted by Laws 1953, ch. 139, § 64; 1953 Comp., § 64-18-9; recompiled as 1953 Comp., § 64-7-309, by Laws 1978, ch. 35, § 413.

**ANNOTATIONS**

**Cross references.** — For the penalty assessment for violation, *see* 66-8-116 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 266, 839, 842.

Rights, duties and liability with respect to narrow bridge or passage as between motor vehicles approaching from opposite directions, 47 A.L.R.2d 142.

60A C.J.S. Motor Vehicles §§ 306, 307; 61A C.J.S. Motor Vehicles § 686.

## 66-7-310. Overtaking a vehicle on the left.

The following rules shall govern the overtaking and passing of vehicles proceeding in the same direction, subject to those limitations, exceptions and special rules hereinafter stated:

A. the driver of a vehicle overtaking another vehicle proceeding in the same direction shall pass to the left thereof at a safe distance and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle; and

B. except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle on audible signal and shall not increase the speed of his vehicle until completely passed by the overtaking vehicle.

**History:** 1953 Comp., § 64-7-310, enacted by Laws 1978, ch. 35, § 414.

**ANNOTATIONS**

**Cross references.** — For the penalty assessment for violation, *see* 66-8-116 NMSA 1978.

**Left lane truck not proximate cause when right lane car swerving.** — Where car signaled for a right turn and veered to the right, then suddenly signaled for a left turn and went from the right to the left side of the road, thereby creating a sudden emergency which truck driver in left lane could not reasonably avoid, truck driver exercised ordinary care in the circumstances and did not violate any statutory or customary rule of the road, so as to proximately contribute to the accident. *Watts v. Roberts*, 282 F.2d 565 (10th Cir. 1960).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 262, 859.

Rights and liabilities as between drivers of motor vehicles proceeding in same direction, where one or both attempt to pass on left of another vehicle so proceeding, 27 A.L.R.2d 317.

Reciprocal rights, duties and liabilities where driver of motor vehicle attempts to pass on right of other motor vehicle proceeding in same direction, 38 A.L.R.2d 114.

Proximate cause as question for jury where motor vehicle driver, passing on left of other vehicle proceeding in same direction, cuts back to the right, 48 A.L.R.2d 232.

Duty and liability of overtaken driver with respect to adjusting speed to that of passing vehicle, 91 A.L.R.2d 1260.

Duty and liability with respect to giving audible signal when driver's view ahead is obstructed at curve or hill, 16 A.L.R.3d 897.

Duty and liability with respect to giving audible signal before passing, 22 A.L.R.3d 325.

60A C.J.S. Motor Vehicles §§ 324 to 326; 61A C.J.S. Motor Vehicles § 686.

## 66-7-311. When overtaking on the right is permitted.

A. The driver of a vehicle may overtake and pass upon the right of another vehicle only under the following conditions:

(1) when the vehicle overtaken is making or about to make a left turn;

(2) upon a street or highway with unobstructed pavement not occupied by parked vehicles of sufficient width for two or more lines of moving vehicles in each direction; or

(3) upon a one-way street, or upon any roadway on which traffic is restricted to one direction of movement, where the roadway is free from obstructions and of sufficient width for two or more lines of moving vehicles.

B. The driver of a vehicle may overtake and pass another vehicle upon the right only under conditions permitting such movement in safety. In no event shall such movement be made by driving off the pavement or main-traveled portion of the roadway.

**History:** 1953 Comp., § 64-7-311, enacted by Laws 1978, ch. 35, § 415.

**ANNOTATIONS**

**Cross references.** — For the penalty assessment for violation, *see* 66-8-116 NMSA 1978.

**Since highway was four lanes, overtaking and passing on right** was permissible. *Sapp v. Atlas Bldg. Prods. Co.*, 1957-NMSC-021, 62 N.M. 239, 308 P.2d 213.

**Passing on right within flashing yellow intersection** is negligence question for jury. *Butcher v. Safeway Stores, Inc.*, 1967-NMCA-029, 78 N.M. 593, 435 P.2d 212.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 265.

Reciprocal rights, duties, and liabilities where driver of motor vehicle attempts to pass on right of another vehicle proceeding in the same direction, 38 A.L.R.2d 114.

Liability for accident arising from failure of motorist to give signal for left turn at intersection as against motor vehicle proceeding in same direction, 39 A.L.R.2d 15.

Failure of motorist to give signal for left turn between intersections, liability for accident arising from, 39 A.L.R.2d 103.

What amounts to reckless driving of motor vehicle within statute making such a criminal offense, 52 A.L.R.2d 1337.

Construction, applicability, and effect of traffic regulation prohibiting vehicles from passing one another at street or highway intersection, 53 A.L.R.2d 850.

Automobiles: liability for U-turn collisions, 53 A.L.R.4th 849.

60A C.J.S. Motor Vehicles § 326; 61A C.J.S. Motor Vehicles § 686.

## 66-7-312. Limitations on overtaking on the left.

No vehicle shall be driven to the left side of the center of the roadway in overtaking and passing another vehicle proceeding in the same direction unless such left side is clearly visible and free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be completely made without interfering with the safe operation of any vehicle approaching from the opposite direction or any vehicle overtaken. In every event the overtaking vehicle must return to the right-hand side of the roadway before coming within one hundred feet of any vehicle approaching from the opposite direction.

**History:** 1953 Comp., § 64-7-312, enacted by Laws 1978, ch. 35, § 416.

**ANNOTATIONS**

**Cross references.** — For the penalty assessment for violation, *see* 66-8-116 NMSA 1978.

**Passing on hill approaching sharp curve constitutes negligence per se.** — Where a violation of these provisions constitutes negligent conduct per se, in an action for damages and where third truck attempting to pass on sharp curve caused collision between two other trucks, the fact that the third truck did not actually collide with either of the vehicles or that the driver did not know that a collision had occurred would be immaterial if his negligence in passing a vehicle on a hill and when approaching a curve was the proximate cause of the collision. *Wilsey-Bennett Trucking Co. v. Frost*, 275 F.2d 144 (10th Cir. 1960).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Rights and liabilities as between drivers of motor vehicles proceeding in same direction, where one or both attempt to pass on left of another vehicle so proceeding, 27 A.L.R.2d 317.

Reciprocal rights, duties and liabilities where driver of motor vehicle attempts to pass on right of other motor vehicle proceeding in same direction, 38 A.L.R.2d 114.

Construction, applicability and effect of traffic regulation prohibiting vehicles from passing one another at street or highway intersection, 53 A.L.R.2d 850.

60A C.J.S. Motor Vehicles § 326.

## 66-7-313. Further limitations on driving to left of center of roadway.

A. No vehicle shall at any time be driven to the left side of the roadway under the following conditions:

(1) when approaching the crest of a grade or upon a curve in the highway where the driver's view is obstructed within such distance as to create a hazard in the event another vehicle might approach from the opposite direction;

(2) when approaching within one hundred feet of or traversing any intersection or railroad grade crossing; or

(3) when the view is obstructed upon approaching within one hundred feet of any bridge, viaduct or tunnel.

B. The foregoing limitations shall not apply upon a one-way roadway.

**History:** 1953 Comp., § 64-7-313, enacted by Laws 1978, ch. 35, § 417.

**ANNOTATIONS**

**Cross references.** — For the penalty assessment for violation, *see* 66-8-116 NMSA 1978.

**Passing on hill approaching sharp curve constitutes negligence per se.** — Where a violation of these provisions constitutes negligent conduct per se, in an action for damages and where third truck attempting to pass on sharp curve caused collision between two other trucks, the fact that the third truck did not actually collide with either of the vehicles or that the driver did not know that a collision had occurred would be immaterial if his negligence in passing a vehicle on a hill and when approaching a curve was the proximate cause of the collision. *Wilsey-Bennett Trucking Co. v. Frost*, 275 F.2d 144 (10th Cir. 1960).

**Some passing bans not applicable to private roads.** — Where roadway was shown not to be a public road, then the statutory ban on passing other vehicles within 100 feet of an intersection of two roads did not apply. *Moore v. Armstrong*, 1960-NMSC-098, 67 N.M. 350, 355 P.2d 284.

**Custom and usage right-of-way evidence** admitted for private road accidents. *Irwin v. Graham*, 1956-NMSC-114, 62 N.M. 72, 304 P.2d 875.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Negligence of motorist as to injury or damage occasioned in avoiding collision with vehicle approaching in wrong lane, 47 A.L.R.2d 119.

Construction and application of statutes regulating or forbidding passing on hill by vehicle, 60 A.L.R.2d 211.

What is a street or highway intersection within traffic rules, 7 A.L.R.3d 1204.

Duty and liability with respect to giving audible signal where driver's view ahead is obstructed at curve or hill, 16 A.L.R.3d 897.

60A C.J.S. Motor Vehicles § 268.

## 66-7-314. Movement of hazardous vehicle; escort may be required.

When, in the judgment of the New Mexico state police division of the department of public safety or local authorities with respect to highways under their jurisdiction, the movement of any vehicle is deemed a hazard to traffic upon a highway over which the vehicle is to travel, the granting of permission for the movement of the vehicle may be conditioned upon a special escort accompanying the hazardous vehicle.

**History:** 1953 Comp., § 64-7-314, enacted by Laws 1978, ch. 35, § 418; 1988, ch. 14, § 7; 2007, ch. 209, § 7; 2015, ch. 3, § 35.

**ANNOTATIONS**

**Cross references.** — For movement of vehicles or loads of excessive size and weight, *see* 66-7-413 NMSA 1978.

**The 2015 amendment,** effective July 1, 2015, provided the New Mexico state police division of the department of public safety with the authority over the movement of hazardous vehicles; after "judgment of the", deleted "motor transportation" and added "New Mexico state police".

**The 2007 amendment,** effective July 1, 2007, eliminated the requirement that the chief of the state police furnish a police escort during the movement of a hazardous vehicle.

**The 1988 amendment,** effective July 1, 1988, made a minor stylistic change in Subsection A and, in Subsection B, substituted "three hundred dollars ($300)" for "fifty dollars ($50)" and "New Mexico state police division" for "state police".

**Private escort service may be used.** — If a load is 20 feet wide or over (a house), the option lies with the division to allow the carrier to furnish his own escort, as opposed to a police escort, such as that provided by a private business escort service. 1972 Op. Att'y Gen. No. 72-21.

## 66-7-315. No-passing zones.

A. The state transportation commission and local authorities may determine those portions of any highway under their respective jurisdictions where overtaking and passing or driving on the left of the roadway would be especially hazardous and may, by appropriate signs or markings on the roadway, indicate the beginning and end of such zones. When the signs or markings are in place and clearly visible to an ordinarily observant person, every driver of a vehicle shall obey the directions of the signs or markings.

B. Where signs or markings are in place to define a no-passing zone as set forth in Subsection A of this section, no driver shall at any time drive on the left side of the roadway within the no-passing zone or on the left side of any pavement striping designed to mark the no-passing zone throughout its length.

C. This section does not apply under the conditions described in Paragraph (2) of Subsection A of Section 66-7-308 NMSA 1978 or to the driver of a vehicle turning left into or from an alley, private road or driveway.

**History:** 1953 Comp., § 64-7-315, enacted by Laws 1978, ch. 35, § 419; 2003, ch. 142, § 17.

**ANNOTATIONS**

**Cross references.** — For the penalty assessment for violation, *see* 66-8-116 NMSA 1978.

**The 2003 amendment,** effective July 1, 2003, substituted "transportation commission" for "highway commission" in Subsection A; and substituted "Paragraph (2) of

Subsection A of Section 66-7-308 NMSA 1978" for "Section 64-7-308A(2) NMSA 1953" in Subsection C.

**Negligence per se to change lanes in marked no-passing zone.** — Where the defendant had turned from the right driving lane of the highway over into the left driving lane at a place which was marked by appropriate markings by the New Mexico state highway department (now department of transportation) to indicate there was a no-passing zone, and such markings were visible to an ordinarily observant man, then the defendant was guilty of negligence per se. *Maestas v. Christmas*, 1958-NMSC-021, 63 N.M. 447, 321 P.2d 631.

**Section not lesser included offense of reckless driving or vehicular homicide.** — Section 64-18-14, 1953 Comp. (similar to this section), is not a lesser included offense of Sections 64-22-1 to 64-22-3, 1953 Comp. (similar to 66-8-101 and 66-8-113 NMSA 1978, respectively). *State v. Villa*, 1973-NMCA-125, 85 N.M. 537, 514 P.2d 56.

**No-passing zone regulations effective without filing where defendant admitted understanding.** — Rules and regulations of state highway department (now department of transportation) regarding no-passing zones were effective although not filed with supreme court library as required by former Section 4-10-13 1953 Comp. et seq. (now Section 14-4-5 NMSA 1978), where defendant admitted that he understood the significance of yellow barrier lines and that they designated no-passing zones. *Maestas v. Christmas*, 1958-NMSC-021, 63 N.M. 447, 321 P.2d 631.

**Crossing over yellow line places driver in hazardous position.** — If from the point where a motorist passes into the left side of the highway the yellow line can be seen on the right hand side of the road, then if thereafter before crossing over to his proper lane there appears a yellow line in that lane, then he has violated the provision. He has placed himself in a position on the highway which has been determined to be hazardous. 1955 Op. Att'y Gen. No. 55-6297.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 60 C.J.S. Motor Vehicles § 16.

## 66-7-316. One-way roadways and rotary traffic islands.

A. The state transportation commission may designate any highway or any separate roadway under its jurisdiction for one-way traffic and shall erect appropriate signs giving notice of that designation.

B. Upon a roadway designated and signposted for one-way traffic, a vehicle shall be driven only in the direction designated.

C. A vehicle passing around a rotary traffic island shall be driven only to the right of the island.

**History:** 1953 Comp., § 64-7-316, enacted by Laws 1978, ch. 35, § 420; 2003, ch. 142, § 18.

**ANNOTATIONS**

**Cross references.** — For the penalty assessment for violation, *see* 66-8-116 NMSA 1978.

**The 2003 amendment,** effective July 1, 2003, substituted "transportation commission" for "highway commission" in Subsection A.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 217.

Duty and liability of vehicle driver approaching intersection of one-way street with other street, 62 A.L.R.2d 275.

60 C.J.S. Motor Vehicles § 33.

## 66-7-317. Driving on roadways laned for traffic.

Whenever any roadway has been divided into two or more clearly marked lanes for traffic the following rules in addition to all others consistent herewith shall apply:

A. a vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety;

B. upon a roadway which is divided into three lanes a vehicle shall not be driven in the center lane except when overtaking a [and] passing another vehicle where the roadway is clearly visible and such center lane is clear of traffic within a safe distance, or in preparation for a left turn or where such center lane is at the time allocated exclusively to traffic moving in the direction the vehicle is proceeding and is signposted to given [give] notice of such allocation; and

C. official signs may be erected directing slow-moving traffic to use a designated lane or designating those lanes to be used by traffic moving in a particular direction regardless of the center of the roadway and drivers of vehicles shall obey the directions of every such sign.

**History:** 1953 Comp., § 64-7-317, enacted by Laws 1978, ch. 35, § 421.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For the penalty assessment for violation, *see* 66-8-116 NMSA 1978.

**"As nearly as practicable" interpreted.** — The statute requires a driver to maintain his or her vehicle in a single lane, as closely as feasible, by utilizing good judgment and taking into account the safety considerations of a particular situation, and a determination of whether a driver has driven as nearly as practicable within a single lane requires a fact-specific inquiry into the particular circumstances present during the incident in question. *State v. Siqueiros-Valenzuela*, 2017-NMCA-074, cert. denied.

**Defendant safely maintained her lane of travel as nearly as practicable.** — Where police officer stopped defendant's vehicle after defendant's left tires touched the yellow shoulder line of the left passing lane while attempting to pass two semi-trucks that were in the right lane of the highway, the evidence was sufficient for the fact-finder to determine that defendant safely maintained her lane of travel as nearly as practicable, and therefore the district court did not err in finding that defendant's single, momentary touching of the shoulder line did not constitute a violation of 66-7-317(A) NMSA 1978. *State v. Siqueiros-Valenzuela*, 2017-NMCA-074, cert. denied.

**Reasonable suspicion to stop defendant.** — Where police officer made a traffic stop of defendant's vehicle after witnessing defendant, while driving on interstate 25 in Las Cruces, New Mexico, straddle the dotted line separating the right lane of the interstate from the Doña Ana exit lane with about a quarter of the width of defendant's vehicle over the dotted line, the officer had reasonable suspicion, under the totality of the circumstances, to believe that defendant violated this section, because the video evidence demonstrated that defendant failed to maintain the traffic lane and there were no weather conditions or road obstructions that would have required defendant to straddle the dotted line between the exit and the right lane of the interstate. *United States v. Cruz*, 338 F.Supp.3d 1235 (D. N.M. 2018).

**Provision does not apply to one-car accident.** — The legislature did not explicitly state whom it sought to protect in Sections 64-18-8, 1953 Comp. (similar to Section 66-7-307 NMSA 1978) and 64-18-16, 1953 Comp. (similar to this section); it is doubtful that the provision could have been intended by the legislature to apply to a one-car accident of unknown cause in which driver and passenger were killed (regardless of the fact that evidence showed the car crossed into the left-hand lane before its final plunge). The district court properly refused to submit a negligence per se instruction based on these provisions to the jury. *Archibeque v. Homrich*, 1975-NMSC-066, 88 N.M. 527, 543 P.2d 820.

**Person travelling upon multi-lane roadway has right to assume,** in the absence of indication to the contrary, that a fellow motorist will continue in his lane of travel. *Aragon v. Speelman*, 1971-NMCA-161, 83 N.M. 285, 491 P.2d 173.

**Before lane change driver must ascertain safety of such move.** — Before a motorist travelling on a multi-lane highway changes lanes he must first ascertain if he can do so

safely without endangering following or approaching traffic. *Aragon v. Speelman*, 1971-NMCA-161, 83 N.M. 285, 491 P.2d 173.

**Actual disruption is not an element of the offense.** — Actual disruption of traffic is not required to establish a violation of this section which prohibits unsafe lane changes. *United States v. Vance*, 893 F.3d 763 (10th Cir. 2018).

**A reasonable officer could believe defendant failed to ascertain safety of lane change.** — Where a law enforcement officer stopped defendant on a three-lane highway after observing defendant "dart" from the left lane to the right lane without pausing in the center lane, and where there was another vehicle in the center lane which blocked defendant's view of the right lane, the district court did not err in denying defendant's motion to suppress evidence of the traffic stop, because actual disruption of traffic is not required to establish a violation of this section, and it was reasonable for the officer to believe that defendant could not have adequately determined whether his lane change could be made with safety. *United States v. Vance*, 893 F.3d 763 (10th Cir. 2018).

**Crossing center line is not a per se traffic violation** under New Mexico traffic laws. If the movement can be made with safety it is not unlawful. *United States v. Borcich*, 460 F.2d 1391 (10th Cir. 1972).

**Lane change instruction improper if no evidence of unsafety.** — Where there was no evidence that defendant automobile driver who struck child on bicycle on divided four-lane highway could not safely switch from outside to unobstructed inside lane 200 to 300 yards from decedent when driver observed decedent in outside lane, instruction of change of lane raised false issue. *Aragon v. Speelman*, 1971-NMCA-161, 83 N.M. 285, 491 P.2d 173.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 60A C.J.S. Motor Vehicles § 274.

## 66-7-318. Following too closely.

A. The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of the vehicles and the traffic upon and the condition of the highway.

B. The driver of any motor truck or motor vehicle drawing another vehicle when traveling upon a roadway outside of a business or residence district shall not follow another motor truck or motor vehicle drawing another vehicle within three hundred feet, except that this shall not prevent a motor truck or motor vehicle drawing another vehicle from overtaking and passing any like vehicle or other vehicle.

C. Motor vehicles being driven upon any roadway outside of a business or residence district in a caravan or motorcade, whether or not towing other vehicles, shall

not follow the preceding vehicle closer than three hundred feet. This provision shall not apply to:

(1) funeral processions nor shall it apply within or outside of a business or residence district to motor vehicle escort vehicles of a motor vehicle escort service, which may, if necessary to maintain the continuity of the escorted unit or units, precede or follow at a distance closer than three hundred feet to the escorted unit or units; or

(2) a vehicle that is part of a driver-assisted platoon and that is not the lead motor vehicle.

**History:** 1941 Comp., § 68-2417, enacted by Laws 1953, ch. 139, § 72; 1953 Comp., § 64-18-17; Laws 1971, ch. 255, § 2; recompiled as 1953 Comp., § 64-7-318, by Laws 1978, ch. 35, § 422; 2021, ch. 114, § 6.

## ANNOTATIONS

**Cross references.** — For the definitions of "business district" and "residence district", *see* 66-1-4.2 and 66-1-4.15 NMSA 1978, respectively.

For the penalty assessment for violation, *see* 66-8-116 NMSA 1978.

**The 2021 amendment,** effective July 1, 2022, provided an additional exception to the provision prohibiting drivers from following other vehicles too closely; and added Paragraph C(2).

**Violation is proper question for jury.** — Violations of Sections 64-18-4, 1953 Comp. (similar to Section 66-7-305 NMSA 1978) (driving so slow as to impede traffic), 64-18-49, 1953 Comp. (similar to Section 66-7-349 NMSA 1978) (stopping on a highway) and Subsection A of this section (following too closely), which were enacted for the benefit of the public, were proper questions for jury. *Archuleta v. Johnston*, 1971-NMCA-158, 83 N.M. 380, 492 P.2d 997, cert. denied, 83 N.M. 379, 492 P.2d 996.

**Violation is negligence per se.** — Where an ordinance, in force at the time of a collision, is substantially the same as Subsection A of this section, and there is substantial evidence of its violation, it is error not to instruct the jury that violation of the ordinance constitutes negligence per se, or as a matter of law. *Rogers v. Thomas*, 1970-NMCA-089, 81 N.M. 723, 472 P.2d 986.

The fact that defendant rear-ended the plaintiffs' vehicle, while being aware of the busy traffic conditions, with the sun in his eyes, was strong evidence that he followed another vehicle more closely than was reasonable and prudent, in violation of this section which constituted negligence per se. *Lozoya v. Sanchez*, 2003-NMSC-009, 133 N.M. 579, 66 P.3d 948, *abrogated Heath v. La Mariana Apartments*, 2008-NMSC-017, 143 N.M. 657, 180 P.3d 664.

**Section not unconstitutionally vague.** — Where defendant was charged with DWI after his vehicle was stopped for following too closely behind another vehicle, and where defendant moved to suppress evidence of intoxication obtained after the stop, claiming that 66-7-318 NMSA 1978 is unconstitutionally vague and that the officer therefore lacked reasonable suspicion to stop his vehicle, the district court did not err in denying defendant's motion to suppress, because the "reasonable and prudent" standard provided in this section provides adequate notice to drivers of what driving behavior is proscribed by the statute and does not invite ad hoc application or inconsistent enforcement. *State v. Chavez*, 2018-NMCA-056.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 261.

Liability for injury or damages resulting from operation of vehicle in funeral procession or in procession, which is claimed to have special status, 52 A.L.R. 5th 155.

60A C.J.S. Motor Vehicles §§ 323(2), 326.

## 66-7-319. Driving on divided highways.

Whenever any highway has been divided into two roadways by leaving an intervening space or by a physical barrier or clearly indicated dividing section so constructed as to impede vehicular traffic, every vehicle shall be driven only upon the right-hand roadway and no vehicle shall be driven over, across or within any such dividing space, barrier or section, except through an opening in such physical barrier or dividing section or space or at a crossover or intersection established by public authority.

**History:** 1941 Comp., § 68-2418, enacted by Laws 1953, ch. 139, § 73; 1953 Comp., § 64-18-18; recompiled as 1953 Comp., § 64-7-319, by Laws 1978, ch. 35, § 423.

**ANNOTATIONS**

**Cross references.** — For the penalty assessment for violation, *see* 66-8-116 NMSA 1978.

**Not lack of care if in proper lane.** — Truck driver in west northbound lane of four-lane divided highway was proceeding in compliance with this section; he was in a lane where he had a right to be. He, therefore, cannot be held liable for lack of ordinary care, even though his truck blocked the view of the truck beside his. *Butcher v. Safeway Stores, Inc.*, 1967-NMCA-029, 78 N.M. 593, 435 P.2d 212.

**Accident not unavoidable where obstruction seen moments before.** — The presence of an island dividing traffic to right and left in a roadway traveled moments before when proceeding in the opposite direction controverted defendant's argument that he was so surprised by the sudden appearance and unanticipated presence of the

island and divided roadway as to make what followed an unavoidable accident. *Baros v. Kazmierczwk*, 1961-NMSC-055, 68 N.M. 421, 362 P.2d 798.

**Negligence not predicated upon mere intent to violate section.** — Where it is undisputed that the plaintiff's car was standing still in her right-hand roadway and that at the time of the collision no part of her automobile had crossed any intervening space, physical barrier or dividing section of the roadway, her mere intention to cross the dividing line, even if such a crossing would violate this section, does not constitute a violation of it. Certainly negligence cannot be predicated upon a mere intention to do a prohibited act. *McKeough v. Ryan*, 1968-NMSC-150, 79 N.M. 520, 445 P.2d 585.

**"Working on highway" exemption strictly construed.** — The provisions of Section 64-15-4, 1953 Comp. (similar to Section 66-7-5 NMSA 1978) creating the exemption for work on the highway should be strictly construed and the right of the defendant to the benefits of the exemption must be clear and unmistakable. *Sturgeon v. Clark*, 1961-NMSC-125, 69 N.M. 132, 364 P.2d 757.

**Sufficient evidence of offense.** — Where the evidence showed that defendant drove defendant's vehicle across the median separating the easterly and westerly highways of an interstate highway at a point where there was no authorized crossover or intersection and defendant stated that defendant knew that defendant was not supposed to cross the median, the evidence was sufficient to support defendant's conviction of unlawful driving on a divided highway. *State v. Baldwin*, 2001-NMCA-063, 130 N.M. 705, 30 P.3d 394.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 260.

60A C.J.S. Motor Vehicles § 278.

## 66-7-320. Restricted access.

No person shall drive a vehicle onto or from any controlled-access roadway except at such entrances and exits as are established by public authority.

**History:** 1941 Comp., § 68-2419, enacted by Laws 1953, ch. 139, § 74; 1953 Comp., § 64-18-19; recompiled as 1953 Comp., § 64-7-320, by Laws 1978, ch. 35, § 424.

**ANNOTATIONS**

**Cross references.** — For the definition of "controlled-access highway", *see* 66-1-4.3 NMSA 1978.

For the penalty assessment for violation, *see* 66-8-116 NMSA 1978.

For the unlawful use of controlled-access facilities, *see* 67-11-10 NMSA 1978.

## 66-7-321. Restrictions on use of controlled-access roadway.

A. The state transportation commission, by resolution or order entered in its minutes, and local authorities, by ordinance, may regulate or prohibit the use of any controlled-access roadway within their respective jurisdictions by any class or kind of traffic that is found to be incompatible with the normal and safe movement of traffic.

B. The state transportation commission or the local authority adopting any such prohibition shall erect and maintain official traffic-control devices on the controlled-access roadway on which the prohibitions are applicable, and, when in place, no person shall disobey the restrictions stated on the devices.

**History:** 1941 Comp., § 68-2420, enacted by Laws 1953, ch. 139, § 75; 1953 Comp., § 64-18-20; Laws 1969, ch. 169, § 7; recompiled as 1953 Comp., § 64-7-321, by Laws 1978, ch. 35, § 425; 2003, ch. 142, § 19.

**ANNOTATIONS**

**Cross references.** — For the penalty assessment for violation, *see* 66-8-116 NMSA 1978.

**The 2003 amendment,** effective July 1, 2003, substituted "transportation commission" for "highway commission".

**Commission has power to prohibit ridden or herded animals** on controlled-access highways by a duly passed resolution. 1960 Op. Att'y Gen. No. 60-226.

**Commission may also prevent passing across or through right-of-way.** — The commission has the power, by duly passed resolution, to prohibit animals from passing across, along, over or through the right-of-way of a public controlled access highway within the state. 1960 Op. Att'y Gen. No. 60-226.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Motorist's liability for collision at intersection of ordinary and arterial highways as affected by absence, displacement or malfunctioning of stop sign or other traffic signal, 74 A.L.R.2d 242.

## 66-7-322. Required position and method of turning at intersections.

The driver of a vehicle intending to turn at an intersection shall do so as follows:

A. both the approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway;

B. at any intersection where traffic is permitted to move in both directions on each roadway entering the intersection, an approach for a left turn, except where left-turn provisions are made, shall be made in that portion of the right half of the roadway

nearest the center line thereof and by passing to the right of such center line where it enters the intersection and after entering the intersection the left turn shall be made so as to leave the intersection to the right of the center line of the roadway being entered. Whenever practicable the left turn shall be made in that portion of the intersection to the left of the center of the intersection;

C. upon a roadway with two or more lanes for through traffic in each direction, where a center lane has been provided by distinctive pavement markings for the use of vehicles turning left from both directions, no vehicle shall turn left from any other lane. A vehicle shall not be driven in this center lane for the purpose of overtaking or passing another vehicle proceeding in the same direction. Any maneuver other than a left turn from this center lane will be deemed a violation of this section;

D. at any intersection where traffic is restricted to one direction on one or more of the roadways, the driver of a vehicle intending to turn left at any such intersection shall approach the intersection in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of such vehicle and after entering the intersection the left turn shall be made so as to leave the intersection, as nearly as practicable, in the left-hand lane lawfully available to traffic moving in such direction upon the roadway being entered; and

E. local authorities in their respective jurisdictions may cause markers, buttons or signs to be placed within or adjacent to intersections and thereby require and direct that a different course from that specified in this section be traveled by vehicles turning at an intersection, and when markers, buttons or signs are so placed no driver of a vehicle shall turn a vehicle at an intersection other than as directed and required by the markers, buttons or signs.

**History:** 1941 Comp., § 68-2421, enacted by Laws 1953, ch. 139, § 76; 1953 Comp., § 64-18-21; Laws 1965, ch. 108, § 1; recompiled as 1953 Comp., § 64-7-322, by Laws 1978, ch. 35, § 426.

## ANNOTATIONS

**Cross references.** — For the penalty assessment for violation, *see* 66-8-116 NMSA 1978.

**Left turns.** — Subsection B of Section 66-7-322 NMSA 1978 does not specify a particular lane that a driver, who makes a left turn, must end up in once the turn is completed and permits the driver discretion to choose a lane after completion of a turn. *State v. Almeida*, 2011-NMCA-050, 149 N.M. 651, 253 P.3d 941, cert. denied, 2011-NMCERT-005, 150 N.M. 666, 265 P.3d 717.

Where defendant was stopped by police for making a left turn without ending up in the left most lane of the roadway defendant turned into, the traffic stop was without a

reasonable basis in law. *State v. Almeida*, 2011-NMCA-050, 149 N.M. 651, 253 P.3d 941, cert. denied, 2011-NMCERT-005, 150 N.M. 666, 265 P.3d 717.

**Subsection D was not intended to apply to collision between two vehicles** where both are making a left turn, one following the other, and therefore was not applicable to the question of contributory negligence in such a situation. *Kight v. Butscher*, 1977-NMCA-037, 90 N.M. 386, 564 P.2d 189, cert. denied, 90 N.M. 636, 567 P.2d 485.

**Right to assume obedience to laws.** — A motorcycle rider has a right to assume that an approaching automobile will obey the law in making a left turn. *Greenfield v. Bruskas*, 1937-NMSC-028, 41 N.M. 346, 68 P.2d 921.

**Driver was negligent per se in making right turn,** since the right turn was not made as near as practicable to the right hand curb or edge of the highway. *Sapp v. Atlas Bldg. Prods. Co.*, 1957-NMSC-021, 62 N.M. 239, 308 P.2d 213.

**Failure to yield right-of-way to oncoming traffic negligence per se.** — Where appellees' vehicle was some 40 to 50 feet east of the intersection, traveling 25 to 30 miles per hour, as the left turn was started, appellant was legally bound to look and see westbound traffic so near the intersection and yield the right-of-way. She admittedly failed to do so, and a violation of these statutory standards of conduct was negligence per se. *Danz v. Kennon*, 1957-NMSC-090, 63 N.M. 274, 317 P.2d 321.

**Violation of this and other provisions negligence per se.** — An automobile driver who turned left at a street intersection and failed to pass the center of the intersection before turning, and failed to look to see if she could turn across the lane of traffic with safety, violated various traffic control provisions and was negligent per se. Her negligence was the proximate cause of a collision. *Greenfield v. Bruskas*, 1937-NMSC-028, 41 N.M. 346, 68 P.2d 921.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 256, 257, 259.

Sudden or unsignaled stop or slowing of motor vehicle as negligence, 29 A.L.R.2d 5.

Duty of motor vehicle driver approaching place where children are playing or gathered, 30 A.L.R.2d 5.

Liability for accident arising from failure of motorist to give signal for left turn at intersection as against motor vehicle proceeding in same direction, 39 A.L.R.2d 15.

Liability for accident arising from failure of motorist to give signal for left turn at intersection, as against oncoming or intercepting motor vehicle, 39 A.L.R.2d 65.

Failure of motorist to give signal for left turn between intersections, liability for accident arising from, 39 A.L.R.2d 103.

What amounts to reckless driving of motor vehicle within statute making such a criminal offense, 52 A.L.R.2d 1337.

What is street or highway intersection within traffic rules, 7 A.L.R.3d 1204.

Liability of motorist who left key in ignition for damage or injury caused by stranger operating the vehicle, 45 A.L.R.3d 787.

Liability arising from collision of automobile making U-turn and another vehicle, 53 A.L.R.4th 849.

Liability for personal injury or property damage caused by unauthorized use of automobile which has been parked with keys removed from ignition, 70 A.L.R.4th 276.

60A C.J.S. Motor Vehicles §§ 365 to 368.

## 66-7-323. Turning on curve or crest or [of] grade prohibited.

No vehicle shall be turned so as to proceed in the opposite direction upon any curve, or upon the approach to, or near the crest of a grade, where such vehicle cannot be seen by the driver of any other vehicle approaching from either direction within one thousand feet.

**History:** 1953 Comp., § 64-7-323, enacted by Laws 1978, ch. 35, § 427.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material in the catchline was inserted by the compiler and is not part of the law.

**Cross references.** — For the penalty assessment for violation, *see* 66-8-116 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 259.

Automobiles: liability for U-turn collisions, 53 A.L.R.4th 849.

60A C.J.S. Motor Vehicles §§ 303(7), 367.

## 66-7-324. Starting parked vehicle.

No person shall start a vehicle which is stopped, standing or parked unless and until such movement can be made with reasonable safety.

**History:** 1941 Comp., § 68-2423, enacted by Laws 1953, ch. 139, § 78; 1953 Comp., § 64-18-23; recompiled as 1953 Comp., § 64-7-324, by Laws 1978, ch. 35, § 428.

**ANNOTATIONS**

**Cross references.** — For the penalty assessment for violation, *see* 66-8-116 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 282.

Liability of owner or operator of automobile for injury to one assisting in extricating or starting his stalled or ditched car, 3 A.L.R.3d 780.

Failure of motorist to cramp wheels against curb or turn them away from traffic, or to shut off engine, as causing accidental starting up of parked motor vehicle, 42 A.L.R.3d 1283.

Contributory negligence as defense to action for injury or damage caused by accidental starting up of parked motor vehicle, 43 A.L.R.3d 930.

60A C.J.S. Motor Vehicles § 334.

## 66-7-325. Turning movements and required signals.

A. No person shall turn a vehicle at an intersection unless the vehicle is in proper position upon the roadway as required in Section 66-7-322 NMSA 1978, or turn a vehicle to enter a private road or driveway or otherwise turn a vehicle from a direct course or move right or left upon a roadway unless and until such movement can be made with reasonable safety. No person shall so turn any vehicle without giving an appropriate signal in the manner hereinafter provided in the event any other traffic may be affected by such movement.

B. A signal of intention to turn right or left when required shall be given continuously during not less than the last one hundred feet traveled by the vehicle before turning.

C. No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided herein to the driver of any vehicle immediately to the rear when there is opportunity to give such signal.

**History:** 1953 Comp., § 64-7-325, enacted by Laws 1978, ch. 35, § 429.

**ANNOTATIONS**

**Cross references.** — For the penalty assessment for violation, *see* 66-8-116 NMSA 1978.

**Where police officer had objectively reasonable and articulable suspicion that defendant violated Subsection A** of this section, and officer's testimony supported district court's determination that his patrol car was affected by the lack of a signal on defendant's part, the court's determination is supported by the record. *United States v. Malouff*, 114 Fed. Appx. 975 (10th Cir. 2004).

**The phrase "may be affected".** — The phrase "may be affected" means when there is a reasonable possibility that other traffic may be affected. The broad reach and underlying policy of Section 66-7-325A NMSA 1978 dictate that the effect that one driver's movement may have on another driver is not confined to the point in time when the actual, physical movement occurs. Rather, the effect also involves a driver's decision-making process in the time leading up to the movement. *State v. Hubble*, 2009-NMSC-014, 146 N.M. 70, 206 P.3d 579.

**Reasonable compliance with provision.** — The evidence that plaintiff stopped, looked and found cemetery road free of traffic for a distance of 300 feet before entering it establishes reasonable compliance with Sections 64-18-24 and 64-18-30, 1953 Comp. (similar to this section and Section 66-7-331 NMSA 1978, respectively). *International Serv. Ins. v. Ortiz*, 1965-NMSC-095, 75 N.M. 404, 405 P.2d 408.

**If person looks and does not see, reasonable inference follows** that lights did not turn on, but quite the contrary is true when the person who would have seen had he been looking testifies that he was not looking. *Turner v. McGee*, 1961-NMSC-023, 68 N.M. 191, 360 P.2d 383.

**Inability to stop not actionable when properly excused.** — Car, which had signaled turn and was turning, was struck by defendant's car after it had come over a rise in the road from the opposite direction approximately 100 to 150 feet away. The defendant was traveling at a speed of 50 m.p.h. and due to icy road conditions was unable to stop; therefore, the jury could find that there had been no wrong committed by the defendant. *Jensen v. Allen*, 1958-NMSC-012, 63 N.M. 407, 320 P.2d 1016.

**Turning without signaling negligence per se.** — If a truck was proven to be of a certain size, mechanical turning signals would be required and their absence, or nonuse, would be negligence per se from which liability could be found if this negligence was the proximate cause of the accident. *Mills v. Southwest Builders, Inc.*, 1962-NMSC-115, 70 N.M. 407, 374 P.2d 289.

**Negligence per se not to yield right-of-way to oncoming traffic.** — Where appellees' vehicle was some 40 to 50 feet east of the intersection, traveling 25 to 30 miles per hour, as the left turn was started, appellant was legally bound to look and see westbound traffic so near the intersection and yield the right-of-way. She admittedly failed to do so, and a violation of these statutory standards of conduct was negligence per se. *Danz v. Kennon*, 1957-NMSC-090, 63 N.M. 274, 317 P.2d 321.

**Negligence relied upon must be proximate cause of accident** for liability to ensue even though the negligence asserted is negligence as a matter of law for failure to comply with a statutory requirement. *Turner v. McGee*, 1961-NMSC-023, 68 N.M. 191, 360 P.2d 383.

**Whether person negligent for failing to look for fact finder.** — Where the minds of reasonable men might differ as to whether the driver of a bakery truck was negligent in failing to look at the last moment before turning, the causal relationship in a "chain reaction" accident was clearly one for the determination of the fact finder. *Brown v. Hayes*, 1961-NMSC-095, 69 N.M. 24, 363 P.2d 632.

**Section instruction proper where nonsignaling car causes collision among others.** — It was not error for the trial court to instruct the jury in the language of Section 64-18-24, 1953 Comp. (similar to this section), which requires the giving of a signal before stopping, decreasing the speed or turning right or left from a public highway, where plaintiff motorist who had stopped his automobile in time to avoid striking a nonsignaling vehicle was struck from rear by defendant; the court did not interject a false issue into the case in that the lead car's failure to signal went to the issue of proximate cause with respect to this lawsuit, and another instruction informed the jury that a statutory violation must have been the proximate cause. *Sandoval v. Cortez*, 1975-NMCA-088, 88 N.M. 170, 538 P.2d 1192.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 257, 268.

Construction and operation of regulations as to sudden stop or slowing of motor vehicle, 29 A.L.R.2d 5.

Duty of motor vehicle driver approaching place where children are playing or gathered, 30 A.L.R.2d 5.

Liability for accident arising out of motorist's failure to give signal for right turn, 38 A.L.R.2d 143.

Liability for accident arising from failure of motorist to give signal for left turn between intersections, 39 A.L.R.2d 103.

What amounts to reckless driving of motor vehicle within statute making such a criminal offense, 52 A.L.R.2d 1337.

Negligence or contributory negligence of motorist in failing to proceed in accordance with turn signal given, 84 A.L.R.4th 124.

60A C.J.S. Motor Vehicles §§ 301, 354; 61A C.J.S. Motor Vehicles § 653.

## 66-7-326. Signals by hand and arm or signal device.

A. Any stop or turn signal when required herein shall be given either by means of the hand and arm or by a signal lamp or lamps or mechanical signal device except as otherwise provided in Subsection B.

B. Any motor vehicle in use on a highway shall be equipped with, and required signal shall be given by, a signal lamp or lamps or mechanical signal device when the distance from the center of the top of the steering post to the left outside limit of the body, cab or load of such motor vehicle exceeds twenty-four inches, or when the distance from the center of the top of the steering post to the rear limit of the body or load thereof exceeds fourteen feet. The latter measurement shall apply to any single vehicle, also to any combination of vehicles.

**History:** 1953 Comp., § 64-7-326, enacted by Laws 1978, ch. 35, § 430.

## ANNOTATIONS

**Cross references.** — For the penalty assessment for violation, *see* 66-8-116 NMSA 1978.

**Lack of required signal negligence per se.** — If the truck was proved to be of a certain size, mechanical turning signals were required and their absence would be negligence per se from which liability could be found if this negligence was the proximate cause of the accident. *Mills v. Southwest Builders, Inc.*, 1962-NMSC-115, 70 N.M. 407, 374 P.2d 289.

**Statutory violation must be proximate cause of accident.** — Even though a motorist is negligent in entering an intersection without stopping or signaling as required by law or in violation of a right-of-way regulation, it remains a jury question whether such violation was a factor in bringing about the accident. *Williams v. Haas*, 1948-NMSC-004, 52 N.M. 9, 189 P.2d 632.

**If person is looking and does not see, reasonable inference follows** that lights did not turn on, but quite the contrary is true when the person who would have seen had he been looking testifies that he was not looking. *Turner v. McGee*, 1961-NMSC-023, 68 N.M. 191, 360 P.2d 383.

**Requirements apply to trucks only operated within city limits.** — Section 64-18-25, 1953 Comp. (similar to this section), provides an option for the giving of turn signals by means of the hand or mechanical device in the case of automobiles but makes mandatory the use of the mechanical device on trucks which fall within the classifications set forth in Subsection B, and the fact that the vehicle is operated only within city limits has no effect upon this requirement. 1953 Op. Att'y Gen. No. 53-5743.

**Measurement does not include fenders.** — The 24 inches tolerance provided for in Laws 1953, ch. 139, § 80 B does not include, in the computation of the distance, the fenders of a vehicle, but only the body, cab or load. 1953 Op. Att'y Gen. No. 53-5875.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Liability for accident arising from failure of motorist to give signal for left turn between intersections, 39 A.L.R.2d 103.

Motorist's liability for signaling other vehicle or pedestrian to proceed, or to pass signaling vehicle, 14 A.L.R.5th 193.

## 66-7-327. Method of giving hand and arm signals.

All signals herein required given by hand and arm shall be given from the left side of the vehicle in the following manner and such signal shall indicate as follows:

A. left turn: hand and arm extended horizontally;

B. right turn: hand and arm extended upward; and

C. stop or decrease speed: hand and arm extended downward.

**History:** 1953 Comp., § 64-7-327, enacted by Laws 1978, ch. 35, § 431.

**ANNOTATIONS**

**Cross references.** — For the penalty assessment for violation, *see* 66-8-116 NMSA 1978.

**Both drivers in collision guilty of proximate negligence per se.** — Where it appeared that automobile had not been equipped with proper rear view mirror to enable driver to see distance of 200 feet in rear and that driver had not signaled that he was reducing speed or stopping and driver of truck which struck rear of first driver's automobile admitted he followed at distance of only 50 to 100 feet, both drivers were guilty of negligence per se and accident proximately resulted from such negligence. *Pacific Greyhound Lines v. Alabam Freight Lines*, 1951-NMSC-051, 55 N.M. 357, 233 P.2d 1044.

## 66-7-328. Vehicle approaching or entering intersection.

A. The driver of a vehicle approaching an intersection shall yield the right-of-way to a vehicle which has entered the intersection from a different highway.

B. When two vehicles enter an intersection from different highways at approximately the same time the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right.

C. The right-of-way rules declared in Subsections A and B are modified at through highways and otherwise as hereinafter stated in Sections 66-7-328 through 66-7-332 NMSA 1978.

**History:** 1953 Comp., § 64-7-328, enacted by Laws 1978, ch. 35, § 432.

## ANNOTATIONS

**Cross references.** — For the definitions of "intersection" and "right-of-way", *see* 66-1-4.9 and 66-1-4.15 NMSA 1978, respectively.

For the traffic-control signal legend, *see* 66-7-105 NMSA 1978.

For red and yellow flashing lights, *see* 66-7-107 NMSA 1978.

For the penalty assessment for violation of this section, *see* 66-8-116 NMSA 1978.

**Driver entering intersection safe distance from oncoming traffic given priority.** — Where plaintiff entered an intersection at such interval of time and distance as to safely cross ahead of the vehicle approaching from the east, had its driver been exercising due care, Section 64-18-27 A, 1953 Comp. (similar to this section's Subsection A), secured to him the prior use of the intersection. *Brizal v. Vigil*, 1959-NMSC-015, 65 N.M. 267, 335 P.2d 1065.

**Negligence per se not to yield.** — Instruction to the effect that if the plaintiff had entered an intersection prior to the entry thereof by the defendant's vehicle, and that if plaintiff was driving his automobile on the right hand side of the highway and in a reasonable and prudent manner, then the plaintiff, in so driving, was in a favored position and it was the duty of the defendant driver to yield the right-of-way to the plaintiff's vehicle, and if he failed to yield the right-of-way, the defendant would be guilty of negligence per se. *Scofield v. J.W. Jones Constr. Co.*, 1958-NMSC-091, 64 N.M. 319, 328 P.2d 389.

**Driver on left must always yield if danger of collision.** — A driver entering an intersection from the left though he reaches the intersection ahead of the driver on the right is nevertheless obligated to yield to the driver on the right in a situation where there would be danger of collision if both vehicles continued the same course at the same speed. *Sivage v. Linthicum*, 1966-NMSC-149, 76 N.M. 531, 417 P.2d 29.

**Right-of-way provision inapplicable if only one driver applies brakes.** — Subsection B of Section 64-18-27, 1953 Comp. (similar to this section's Subsection B), defining the duty of drivers of vehicles entering an intersection from different highways at approximately the same time did not apply to collision where driver of northbound vehicle did not apply brakes. *Brizal v. Vigil*, 1959-NMSC-015, 65 N.M. 267, 335 P.2d 1065.

**Vehicle on right has right-of-way inapplicable to through highways.** — Requirement that driver on left shall yield right-of-way to vehicle on right when the two vehicles reach intersection at about the same time applies only when neither road is a through highway; it is not applicable when one of the intersecting roads is a through

highway and the other is a "stop" road. *Bunton v. Hull*, 1947-NMSC-005, 51 N.M. 5, 177 P.2d 168.

**Driver on through highway can assume other driver's stopping.** — The driver on a through highway has the right to assume that motorist on an intersecting stop road will obey the law by coming to a full stop before entering the intersection so as to permit the driver on the through highway to proceed across the intersection. *Bunton v. Hull*, 1947-NMSC-005, 51 N.M. 5, 177 P.2d 168.

**Due care must be exercised even if right-of-way.** — Even though right-of-way was in plaintiff's favor such fact did not obviate plaintiff from exercising due care when defendant motorist entered intersection while plaintiff was still some 200 feet away. *Langenegger v. McNally*, 1946-NMSC-017, 50 N.M. 96, 171 P.2d 316.

**Due care if at intersection.** — A motorist who has the right-of-way at an intersection is not excused from the exercise of due care to prevent collision. *Schoen v. Schroeder*, 1948-NMSC-052, 53 N.M. 1, 200 P.2d 1021.

**Failing to see other car not necessarily.** — Merely because plaintiff drove his automobile into intersection from the left when the defendant was driving down the street at undisclosed point on his right it cannot be established as matter of law that such plaintiff was guilty of negligence, even though he did not see defendant's automobile when, before entering the intersection, he looked in his direction. *Schoen v. Schroeder*, 1948-NMSC-052, 53 N.M. 1, 200 P.2d 1021.

**Even if defendant had right-of-way, plaintiff's failure to yield right-of-way** did not constitute such negligence as would relieve the negligent defendant of liability for his negligence after he entered the intersection and for cutting corner and stopping suddenly in the line of traffic. *Miller v. Marsh*, 1948-NMSC-064, 53 N.M. 5, 201 P.2d 341.

**Weight of presumption.** — Presumption which arises in favor of person having right-of-way is of little weight except in absence of any other evidence. *Langenegger v. McNally*, 1946-NMSC-017, 50 N.M. 96, 171 P.2d 316.

**Failure of driver on left to yield when entering intersection** simultaneously with driver to the right held to support direct verdict finding no negligence on part of driver to the right. *Monden v. Elms*, 1963-NMSC-213, 73 N.M. 256, 387 P.2d 458.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic, §§ 236, 237.

Passing at intersection, 53 A.L.R.2d 850.

Duty of driver of vehicle approaching intersection of one-way street with other street, 62 A.L.R.2d 275.

What is street or highway intersection within traffic rules, 7 A.L.R.3d 1204.

60A C.J.S. Motor Vehicles §§ 362 to 364; 61A C.J.S. Motor Vehicles § 714(2).

## 66-7-329. Vehicles turning left at intersection.

The driver of a vehicle within an intersection intending to turn to the left shall yield the right-of-way to any vehicle approaching from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard, but said driver, having so yielded and having given a signal when and as required by the Motor Vehicle Code [66-1-1 NMSA 1978], may make such left turn and the drivers of all other vehicles approaching the intersection from said opposite direction shall yield the right-of-way to the vehicle making the left turn.

**History:** 1953 Comp., § 64-7-329, enacted by Laws 1978, ch. 35, § 433.

**ANNOTATIONS**

**Cross references.** — For the penalty assessment for violation, *see* 66-8-116 NMSA 1978.

**Negligence per se if left-turning vehicle's failure to yield hazardous.** — Where appellees' vehicle was some 40 to 50 feet east of the intersection, traveling 25 to 30 miles per hour, as the left turn was started, appellant was legally bound to look and see westbound traffic so near the intersection and yield the right-of-way. She admittedly failed to do so, and a violation of the proper standards of conduct was negligence per se. *Danz v. Kennon*, 1957-NMSC-090, 63 N.M. 274, 317 P.2d 321.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 238.

Cutting corners as negligence, 115 A.L.R. 1178.

Rights and liabilities as between drivers of motor vehicles proceeding in the same direction, where one or both attempt to pass on left of another vehicle so proceeding, 27 A.L.R.2d 317.

Liability for accident arising from failure of motorist to give signal for left turn at intersection, as against motor vehicle proceeding in same direction, 39 A.L.R.2d 15.

Liability for accident arising from failure of motorist to give signal for left turn at intersection, as against oncoming or intersecting motor vehicle, 39 A.L.R.2d 65.

Liability for accident arising from failure of motorist to give signal for left turn between intersections, 39 A.L.R.2d 103.

What is street or highway intersection within traffic rules, 7 A.L.R.3d 1204.

60A C.J.S. Motor Vehicles §§ 365 to 367.

## 66-7-330. Vehicles entering stop or yield intersection.

A. Preferential right-of-way at an intersection may be indicated by stop signs or yield signs as authorized in the Motor Vehicle Code [66-1-1 NMSA 1978].

B. Except when directed to proceed by a police officer or traffic-control signal, every driver of a vehicle approaching a stop intersection indicated by a stop sign shall stop as required by Section 66-7-345 C [NMSA 1978] and after having stopped shall yield the right-of-way to any vehicle which has entered the intersection from another highway or which is approaching so closely on the highway as to constitute an immediate hazard during the time when the driver is moving across or within the intersection.

C. The driver of a vehicle approaching a yield sign shall, in obedience to the sign, slow down to a speed reasonable for the existing conditions, and shall yield the right-of-way to any vehicle in the intersection or approaching on another highway so closely as to constitute an immediate hazard during the time the driver is moving across or within the intersection. If the driver is involved in a collision with a vehicle in the intersection, after driving past a yield sign without stopping, the collision shall be deemed prima facie evidence of his failure to yield right-of-way.

**History:** 1953 Comp., § 64-7-330, enacted by Laws 1978, ch. 35, § 434.

**ANNOTATIONS**

**Cross references.** — For definition of "intersection", *see* 66-1-4.9 NMSA 1978.

For authorization of state transportation commission to "sign" all state highways, *see* 66-7-102 NMSA 1978.

For the penalty assessment for violation, *see* 66-8-116 NMSA 1978.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not a part of the law.

**Both yield and stop signs warn of other driver's right-of-way.** — The fact that "yield" sign was unauthorized did not increase the hazard. The "yield" was a warning to decedent that travelers on the main highway had a "preferential right-of-way." There was nothing in the record indicating a "yield" sign increases the traveler's hazard over the hazard existing when there is a "stop" sign. The difference is between slowing down and stopping, but both - yield and stop - warn the traveler to avoid a vehicle which is so close as to "constitute an immediate hazard." *Bolen v. Rio Rancho Estates, Inc.*, 1970-NMCA-031, 81 N.M. 307, 466 P.2d 873.

**Through street preferred status not lost even if sign missing.** — The preferred status of a through street is not lost merely because a stop sign is misplaced, improperly removed, destroyed or obliterated. *Williams v. Cobb*, 1977-NMCA-060, 90 N.M. 638, 567 P.2d 487, cert. denied, 91 N.M. 3, 569 P.2d 413.

**Vehicle on right has right-of-way inapplicable to through highways.** — Requirement that driver on the left yield right-of-way to vehicle on the right when two vehicles reach intersection at about the same time applies only when neither road is a through highway; it is not applicable when one of the intersecting roads is a through highway and the other is a "stop" road. *Bunton v. Hull*, 1947-NMSC-005, 51 N.M. 5, 177 P.2d 168.

**Driver on through highway can assume other driver's stopping.** — The driver on a through highway has the right to assume that motorist on an intersecting stop road will obey the law by coming to a full stop before entering the intersection so as to permit the driver on the through highway to proceed across the intersection. *Bunton v. Hull*, 1947-NMSC-005, 51 N.M. 5, 177 P.2d 168.

**Provision applies to persons utilizing animal power.** — Sections 64-18-29, 1953 Comp. (similar to this section), and 66-7-345 NMSA 1978, when read along with Section 64-15-6, 1953 Comp. (similar to Section 66-7-7 NMSA 1978), provide that persons riding animals or driving animal drawn vehicles must stop before entering a through highway or before entering an intersection where a stop sign is posted, and shall yield the right-of-way to other vehicles approaching the intersection. *Knox v. Trujillo*, 1963-NMSC-132, 72 N.M. 345, 383 P.2d 823.

**No duty to stop with sign where two separate intersections.** — Where east-west street had two lanes separated by 30-foot wide grass parkway and intersected north-south street, two separate intersections were created, and southbound motorist had no duty to stop at southern roadway where there was no stop sign, even though there was a stop sign at the northern roadway, although he did have duty to operate his automobile in a careful and prudent manner. *Vargas v. Clauser*, 1957-NMSC-035, 62 N.M. 405, 311 P.2d 381.

**If there is no evidence that stop sign is involved** in an action arising out of an accident occurring in a cross-walk, an instruction to the jury concerning the stop sign is erroneous because it injects a false issue into the case. *Delgado v. Alexander*, 1972-NMCA-156, 84 N.M. 456, 504 P.2d 1089, *aff'd*, 1973-NMSC-030, 84 N.M. 717, 507 P.2d 778.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 234.

Custom or practice of drivers of motor vehicles as affecting question of negligence at intersections, 77 A.L.R.2d 1327.

Sudden or unsignalled stop or slowing of motor vehicles as negligence, 29 A.L.R.2d 5.

Duty of motor vehicle driver approaching place where children are playing or gathered, 30 A.L.R.2d 5.

Liability for automobile accident other than direct collision with pedestrian as affected by reliance upon or disregard of stop-and-go signal, 2 A.L.R.3d 12.

Liability for collision of automobile with pedestrian at intersection as affected by reliance upon or disregard of stop-and-go signal, 2 A.L.R.3d 155.

Liability for automobile accident at intersection as affected by reliance upon or disregard of "yield" sign or signal, 2 A.L.R.3d 275.

Liability for automobile accident at intersection as affected by reliance upon or disregard of unchanging stop signal or sign, 3 A.L.R.3d 180.

Liability for collision of automobile with pedestrian at intersection as affected by reliance upon or disregard of traffic sign or signal other than stop-and-go signal, 3 A.L.R.3d 557.

What is street or highway intersection within traffic rules, 7 A.L.R.3d 1204.

Liability of highway authorities arising out of motor vehicle accident allegedly caused by failure to erect or properly maintain traffic control device at intersection, 34 A.L.R.3d 1008.

60A C.J.S. Motor Vehicles § 360(5) to (7).

## 66-7-331. Vehicle entering highway from private road or driveway.

The driver of a vehicle about to enter of [or] cross a highway from a private road or driveway shall yield the right-of-way to all vehicles approaching on said highway.

**History:** 1953 Comp., § 64-7-331, enacted by Laws 1978, ch. 35, § 435.

**ANNOTATIONS**

**Cross references.** — For the definition of "private road or driveway", *see* 66-1-4.14 NMSA 1978.

For requirement to stop before emerging from alley or private driveway, *see* 66-7-346 NMSA 1978.

For the penalty assessment for violation of this section, *see* 66-8-116 NMSA 1978.

**Not negligent if stopped and looked before entering street.** — The evidence that plaintiff stopped, looked and found road free of traffic for a distance of 300 feet before entering it establishes reasonable compliance with the law and the plaintiff is therefore free from negligence. *International Serv. Ins. v. Ortiz*, 1965-NMSC-095, 75 N.M. 404, 405 P.2d 408.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 204.

Construction, applicability, and effect of traffic regulation prohibiting vehicles from passing one another at street or highway intersection, 53 A.L.R.2d 850.

Backing into highway or street from private way, 63 A.L.R.2d 108.

60A C.J.S. Motor Vehicles §§ 345, 347, 350.

## 66-7-332. Operation of vehicles on approach of moving authorized emergency vehicles; operation of vehicles on approach of certain stationary vehicles.

A. Upon the immediate approach of an authorized emergency vehicle displaying flashing emergency lights or when the driver is giving audible signal by siren, the driver of every other vehicle shall yield the right of way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the roadway clear of any intersection and shall stop and remain in that position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer.

B. Upon approaching a stationary authorized emergency vehicle or a recovery or repair vehicle displaying flashing emergency or hazard lights, unless otherwise directed, the driver of a vehicle shall:

(1) if reasonably safe to do so, drive in a lane not adjacent to the stationary vehicle, decrease the speed of the vehicle to a speed that is reasonable and prudent under the circumstances and proceed with caution; or

(2) if it is not reasonably safe to drive in a lane not adjacent to the stationary vehicle, decrease the speed of the vehicle to a speed that is reasonable and prudent under the circumstances, proceed with caution and be prepared to stop.

C. This section shall not operate to relieve the driver of an authorized emergency vehicle or the driver of any other vehicle from the duty to drive and park with due regard for the safety of all persons using the highway.

**History:** 1953 Comp., § 64-7-332, enacted by Laws 1978, ch. 35, § 436; 2001, ch. 59, § 1; 2005, ch. 10, § 1; 2017, ch. 75, § 2.

## ANNOTATIONS

**Cross references.** — For the definition of "authorized emergency vehicle", *see* 66-1-4.1 NMSA 1978.

For the penalty assessment for violation of this section, *see* 66-8-116 NMSA 1978.

**The 2017 amendment,** effective June 16, 2017, required drivers to treat stationary recovery or repair vehicles with flashing emergency or hazard lights the same as other stationary vehicles with emergency lights on the highway; in the catchline, added "operation of vehicles on approach of certain stationary vehicles"; in Subsection A, after "signal by siren", deleted "exhaust whistle or bell"; in Subsection B, in the introductory clause, after "stationary vehicle", added "or a recovery or repair vehicle", and after "flashing emergency", added "or hazard", in Paragraph B(1), after "adjacent to", deleted "where", after the next occurrence of "the", deleted "authorized emergency" and added "stationary", and after the first occurrence of "vehicle", deleted "is stopped", in Paragraph B(2), after "adjacent to", deleted "where", after the next occurrence of "the", deleted "authorized emergency" and added "stationary", and after the first occurrence of "vehicle", deleted "is stopped"; and in Subsection C, after "emergency vehicle", added "or the driver of any other vehicle".

**The 2005 amendment,** effective June 17, 2005, required motorists approaching a stationary emergency vehicles with flashing emergency lights to drive in a lane not adjacent to the emergency vehicle if reasonably safe to do so and to reduce speed.

**The 2001 amendment,** effective June 15, 2001, deleted "other than a police vehicle" preceding "when operated as an authorized emergency vehicle".

**Provision does not state driver's standard of care to passengers.** — The standard of care provided by Section 64-18-31, 1953 Comp. (similar to this section), is not the standard of care owing by an ambulance driver to his passengers. *Otero v. Physicians & Surgeons Ambulance Serv., Inc.*, 1959-NMSC-024, 65 N.M. 319, 336 P.2d 1070.

**Police vehicle showing red lights or sounding siren is emergency vehicle** and all approaching or pursued vehicles are required to stop. 1959 Op. Att'y Gen. No. 59-20.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 244.

Construction and application of statutory provision requiring motorists to yield right-of-way to emergency vehicle, 87 A.L.R.5th 1.

60A C.J.S. Motor Vehicles §§ 371 to 377; 61A C.J.S. Motor Vehicles § 714(2).

## 66-7-332.1. Approach of oncoming vehicle; yield right of way.

A. Notwithstanding any other provision of law, on all roadways, upon the immediate approach of an oncoming vehicle overtaking or attempting to overtake a vehicle proceeding in the same direction, the driver of that vehicle shall yield the right of way and shall drive to a position parallel to and as close as possible to the right hand edge or curb of the roadway and shall remain as close as possible to the right hand edge or curb of the roadway until the oncoming vehicle has passed.

B. This section shall not operate to relieve the driver of an oncoming vehicle from the duty to drive with due regard for the safety of all persons using the highway.

**History:** Laws 1987, ch. 332, § 1.

## 66-7-333. Pedestrians subject to traffic regulations.

A. Pedestrians shall be subject to traffic-control signals at intersections as provided in Section 66-7-105 NMSA 1978 unless required by local ordinance to comply strictly with such signals, but at all other places pedestrians shall be accorded the privileges and shall be subject to the restrictions stated in Sections 66-7-333 through 66-7-340 NMSA 1978.

B. Local authorities are hereby empowered by ordinance to require that pedestrians shall srictly [strictly] comply with the directions of any official traffic-control signal and may by ordinance prohibit pedestrians from crossing any roadway in a business district or any designated highways except in a crosswalk.

**History:** 1953 Comp., § 64-7-333, enacted by Laws 1978, ch. 35, § 437.

**ANNOTATIONS**

**Cross references.** — For the definitions of "crosswalk" and "traffic-control signal", *see* 66-1-4.3 NMSA 1978 and 66-1-4.17 NMSA 1978, respectively.

For the penalty assessment for violation, *see* 66-8-116 NMSA 1978.

For duty of driver to take precautions when approaching blind person, *see* 28-7-4 NMSA 1978.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not a part of the law.

**Crossing street outside of crosswalk at least technical violation.** — Where plaintiff had attempted to cross a city street at a point other than a regular pedestrian crosswalk, plaintiff was in at least technical violation of the right-of-way provisions of the state statutes and of the city ordinances. *Sanchez v. Gomez*, 1953-NMSC-053, 57 N.M. 383, 259 P.2d 346.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 245 to 247, 286.

Collision with pedestrian due to swaying or swinging of motor vehicle or trailer, 1 A.L.R.2d 167.

Injury by vehicle to construction or maintenance worker in street or highway, 5 A.L.R.2d 757.

Liability for injury or damage growing out of pulling out of parked motor vehicle, 29 A.L.R.2d 107.

Liability for injury incident to towing automobile, 30 A.L.R.2d 1019.

Liability for collision of automobile with pedestrian at intersection as affected by reliance upon or disregard of stop-and-go signal, 2 A.L.R.3d 155.

Liability for collision of automobile with pedestrian at intersection as affected by reliance upon or disregard of traffic signal or sign other than stop-and-go signal, 3 A.L.R.3d 557.

Failure to comply with statute regulating travel by pedestrian along highway as affecting right to recovery, 45 A.L.R.3d 658.

Modern trends as to contributory negligence of children, 32 A.L.R.4th 56.

Who is "pedestrian" entitled to rights and subject to duties provided by traffic regulations or judicially stated, 35 A.L.R.4th 1117.

61 C.J.S. Motor Vehicles § 470(1).

## 66-7-334. Pedestrians' right of way in crosswalks.

A. When traffic-control signals are not in place or not in operation, the driver of a vehicle shall yield the right of way, slowing down or stopping if need be to so yield, to a pedestrian crossing the roadway within a crosswalk when the pedestrian is in the crosswalk.

B. A pedestrian shall not suddenly leave a curb or other place of safety and walk or run into the path of a vehicle that is so close that it is impossible for the driver to yield.

C. Subsection A of this section shall not apply under the conditions stated in Subsection B of Section 66-7-335 NMSA 1978.

D. Whenever a vehicle is stopped at a marked crosswalk or at an unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of

another vehicle approaching from the rear shall not overtake and pass the stopped vehicle.

E. A person who violates the provisions of this section is guilty of a penalty assessment misdemeanor.

**History:** 1953 Comp., § 64-7-334, enacted by Laws 1978, ch. 35, § 438; 2007, ch. 92, § 1; 2018, ch. 74, § 44.

## ANNOTATIONS

**Cross references.** — For the definitions of "crosswalk" and "traffic-control signal", *see* 66-1-4.3 NMSA 1978 and 66-1-4.17 NMSA 1978.

For the penalty assessment for violation, *see* 66-8-116 NMSA 1978.

For duty of driver to take precautions when approaching blind person, *see* 28-7-4 NMSA 1978.

**The 2018 amendment,** effective July 1, 2018, provided a penalty for a violation of the provisions of this section, and made technical changes; and added Subsection E.

**The 2007 amendment,** effective July 1, 2007, required vehicles to yield when pedestrians are in the crosswalk.

**Provision inapplicable if no crosswalks or other traffic controls.** — Where there was no substantial evidence that there were crosswalks or other traffic controls and there was no evidence that plaintiff was attempting to cross the highway, Section 64-18-33, 1953 Comp. (similar to this section); had no application under the set of facts developed at the trial. *Pitner v. Loya*, 1960-NMSC-024, 67 N.M. 1, 350 P.2d 230.

**Since there was no traffic signal in place or in operation** of the "traffic-control signal" type, which would deprive plaintiff of the right-of-way as a pedestrian under Section 64-18-33, 1953 Comp. (similar to this section), it was prejudicial error to give instruction stating that ". . . the presence of a crosswalk does not in itself give a pedestrian the right-of-way when there are traffic signals in operation at the intersection, as in this case." *Ward v. Ray*, 1967-NMSC-264, 78 N.M. 566, 434 P.2d 388.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 2 to 4, 6 to 8, 255, 285, 286.

Duty and liability with respect to giving audible signal upon approaching pedestrian, 24 A.L.R.3d 183.

60A C.J.S. Motor Vehicles § 388; 61A C.J.S. Motor Vehicles § 714(2).

## 66-7-335. Crossing at other than crosswalks.

A. A pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right of way to all vehicles upon the roadway.

B. Any pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right of way to all vehicles upon the roadway.

C. Between adjacent intersections at which traffic-control signals are in operation, pedestrians shall not cross at any place except in a marked crosswalk.

D. A person who violates the provisions of this section is guilty of a penalty assessment misdemeanor.

**History:** 1953 Comp., § 64-7-335, enacted by Laws 1978, ch. 35, § 439; 2018, ch. 74, § 45.

**ANNOTATIONS**

**Cross references.** — For definitions applicable to this section, *see* 66-1-4 to 66-1-4.20 NMSA 1978.

For the penalty assessment for violation, *see* 66-8-116 NMSA 1978.

For duty of driver to take precautions when approaching blind person, *see* 28-7-4 NMSA 1978.

**The 2018 amendment,** effective July 1, 2018, provided a penalty for a violation of the provisions of this section, and made technical changes; and added Subsection D.

**Provision does not just apply to city streets.** — Section 64-18-34, 1953 Comp. (similar to this section), was intended to have broad and general application and was not intended to apply only on city streets. *Williams v. Burke*, 1960-NMSC-134, 68 N.M. 35, 357 P.2d 1087.

**Pedestrian must yield right-of-way to vehicles on highway.** — Section 64-18-34, 1953 Comp. (similar to this section), applied in every situation where a pedestrian attempted to cross a road where there was no intersection or marked crosswalk and placed upon the pedestrian a duty to yield the right-of-way to vehicles on the highway. *Williams v. Burke*, 1960-NMSC-134, 68 N.M. 35, 357 P.2d 1087.

**Driver has right to assume pedestrian will observe section's dictates.** — While a driver of an automobile across intersections is charged with notice that a pedestrian may have the right-of-way, and is required to observe reasonable care to accord such to

the pedestrian, yet as between intersections the automobile has the right-of-way and the driver has a right to assume that pedestrians will observe this rule, consequently, he is not required to anticipate that a pedestrian will step from the curb or leave the crosswalk and attempt to cross a street between intersections, and a mere failure to anticipate such act upon the part of a pedestrian would not be negligence in a driver unless the driver saw, or in the exercise of reasonable caution should see, a pedestrian attempting to cross between intersections or outside of crosswalks in time to avoid a collision. *Gallegos v. McKee*, 1962-NMSC-008, 69 N.M. 443, 367 P.2d 934).

**Crossing outside crosswalk at least technical violation.** — Since plaintiff had attempted to cross a city street at a point other than a regular pedestrian crosswalk, plaintiff was in at least technical violation of the right-of-way provisions of the state statutes and of the city ordinances. *Sanchez v. Gomez*, 1953-NMSC-053, 57 N.M. 383, 259 P.2d 346.

**Pedestrian was guilty of negligence per se in crossing street** in the middle of the block in the nighttime so that she was struck by a car with its headlights burning and of which she had an unobstructed view. *McMinn v. Thompson*, 1956-NMSC-089, 61 N.M. 387, 301 P.2d 326.

**Question of proximate cause of injury still remains.** — Where pedestrian himself was guilty of negligence in violating both a statute and municipal code, by attempting to cross the intersection outside the crosswalk, the plaintiff was negligent per se but that still left open under the facts the question whether that negligence was a proximately contributory factor in his injury, and the jury was entitled to answer that question. *Terry v. Bisswell*, 1958-NMSC-045, 64 N.M. 153, 326 P.2d 89.

**Jury must be allowed to answer question of proximate cause.** — Trial court should not have held as a matter of law that plaintiff in crossing of street at other than crosswalk was the proximate contributing cause of her injury and directed a verdict against her because it was the province of the jury to determine such question and to award the plaintiff damages if it determined the issue in the negative. *McMinn v. Thompson*, 1956-NMSC-089, 61 N.M. 387, 301 P.2d 326.

**Mere concurrence of violation of traffic regulation with accident** in point of time does not, of itself, render the violation a concurring cause of the injury. *Terry v. Bisswell*, 1958-NMSC-045, 64 N.M. 153, 326 P.2d 89.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 286.

60A C.J.S. Motor Vehicles § 389.

## 66-7-336. School crossings.

A. Crosswalks may be established over highways abutting a school or the grounds adjacent to a school, and all children crossing the highways shall be required to do so within the marked crosswalks. The state transportation commission, with respect to state highways, and local authorities, with respect to streets under their jurisdiction, with advice of the local superintendent of schools, shall establish and mark or cause to be marked these highway crossings.

B. Crosswalks over highways not abutting school grounds may be established by the state transportation commission, with respect to state highways, and by local authorities, with respect to streets under their jurisdiction, with advice of the local superintendent of schools and after adequate assurance has been given that proper safety precautions will be maintained pursuant to regulations of the state transportation commission and of the local authorities. Responsibility for maintaining the crossing will be with the appropriate county or municipality wherein the school is located.

C. At all school crossings except as provided in this section, appropriate signs shall be provided as prescribed by the state transportation commission or local authorities within their respective jurisdictions, indicating the crossings and regulating traffic movement within the school zones.

D. School crossings are not required to be specially posted when they are located at:

(1) a signalized intersection;

(2) an intersection where traffic is controlled by a stop sign; or

(3) a point where a pedestrian tunnel or overhead crossing is provided.

**History:** 1941 Comp., § 68-2435, enacted by Laws 1953, ch. 139, § 89.1; 1953 Comp., § 64-18-35; Laws 1955, ch. 93, § 1; 1963, ch. 83, § 1; 1975, ch. 6, § 1; recompiled as 1953 Comp., § 64-7-336, by Laws 1978, ch. 35, § 440; 2003, ch. 142, § 20.

## ANNOTATIONS

**Cross references.** — For the penalty assessment for violation, *see* 66-8-116 NMSA 1978.

**The 2003 amendment,** effective July 1, 2003, substituted "transportation commission" for "highway commission".

**Limited responsibility of school authorities.** — Subsection A does not impose a responsiblity on a municipal school system to maintain the cross-walk over the abutting street to one of its schools; this responsibility rests with other local authorities who may receive advice, not orders, from the municipal school system. *Johnson v. School Bd. of*

*Albuquerque Pub. Sch. Sys.*, 1992-NMCA-125, 114 N.M. 750, 845 P.2d 844, cert. denied, 114 N.M. 577, 844 P.2d 827 (1993).

**School and governmental authorities must see that children use crosswalks.** — In schools within municipalities the responsibility for seeing that school children use crosswalks is common between the municipal and school authorities. In schools outside municipalities the responsibility is common between the state and school authorities. 1955 Op. Att'y Gen. No. 55-6073.

**Adult guards, if employed,** may legally be paid out of school funds. 1955 Op. Att'y Gen. No. 55-6073.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Duty of motor vehicle driver approaching place where children are playing or gathered, 30 A.L.R.2d 5.

60A C.J.S. Motor Vehicles § 396(3).

## 66-7-337. Drivers to exercise due care.

Notwithstanding the foregoing provisions of Sections 66-7-333 through 66-7-340 NMSA 1978 every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway and shall give warning by sounding the horn when necessary and shall exercise proper precaution upon observing any child or any confused or incapacitated person upon a roadway.

**History:** 1953 Comp., § 64-7-337, enacted by Laws 1978, ch. 35, § 441.

**ANNOTATIONS**

**Cross references.** — For penalty assessments for violations, *see* 66-8-116 NMSA 1978.

**No absolute duty to sound horn if necessary.** — Section 64-18-36, 1953 Comp. (similar to this section), does impose the duty of "warning by sounding the horn if necessary." This, however, is not an absolute duty and defendant could be excused from a violation of the provision. *Tenorio v. Nolen*, 1969-NMCA-068, 80 N.M. 529, 458 P.2d 604.

**Duty is greater than mere opportunity.** — Inclusion of the words "when the party has the opportunity to sound his horn" in an instruction on defendant's duty under 64-18-36, 1953 Comp. (similar to this section), would have been improper because the instruction would not then have correctly stated the duty imposed by law. *Tenorio v. Nolen*, 1969-NMCA-068, 80 N.M. 529, 458 P.2d 604.

**Since there was no proof that defendant did or did not sound his horn** and defendant testified that he did not recall if he had, and nobody testified that he had not,

no issue of negligence because of failure to sound a horn was presented. *Montoya v. Williamson*, 1968-NMSC-162, 79 N.M. 566, 446 P.2d 214).

**Ability to avoid collision factual issue.** — In a wrongful death action, the question of whether a motorist could have avoided a collision with a pedestrian by keeping a proper lookout and maintaining proper control of his vehicle is normally a factual issue for the trier of fact. *Trujillo v. Treat*, 1988-NMCA-017, 107 N.M. 58, 752 P.2d 250.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Duty of motor vehicle driver approaching place where children are playing or gathered, 30 A.L.R.2d 5.

Duty and liability with respect to giving audible signal upon approaching pedestrian, 24 A.L.R.3d 183.

Who is "pedestrian" entitled to rights and subject to duties provided by traffic regulations or judicially stated, 35 A.L.R.4th 1117.

60A C.J.S. Motor Vehicles §§ 354, 394, 396.

## 66-7-338. Pedestrians to use right half of crosswalk.

A. Pedestrians shall move, whenever practicable, upon the right half of crosswalks.

B. A person who violates the provisions of this section is guilty of a penalty assessment misdemeanor.

**History:** 1941 Comp., § 68-2437, enacted by Laws 1953, ch. 139, § 91; 1953 Comp., § 64-18-37; recompiled as 1953 Comp., § 64-7-338, by Laws 1978, ch. 35, § 442; 2018, ch. 74, § 46.

**ANNOTATIONS**

**The 2018 amendment,** effective July 1, 2018, provided a penalty for a violation of the provisions of this section, and made technical changes; added new subsection designation "A."; and added Subsection B.

## 66-7-339. Pedestrians on roadways.

A. Where sidewalks are provided, it is unlawful for a pedestrian to walk along and upon an adjacent roadway.

B. Where sidewalks are not provided, a pedestrian walking along and upon a highway shall, when practicable, walk only on the left side of the roadway or its shoulder facing traffic that may approach from the opposite direction.

C. A person who violates the provisions of this section is guilty of a penalty assessment misdemeanor.

**History:** 1953 Comp., § 64-7-339, enacted by Laws 1978, ch. 35, § 443; 2018, ch. 74, § 47.

## ANNOTATIONS

**Cross references.** — For duty of driver to take precautions when approaching blind person, *see* 28-7-4 NMSA 1978.

**The 2018 amendment,** effective July 1, 2018, provided a penalty for a violation of the provisions of this section, and made technical changes; and added Subsection C.

**Elements of a violation of pedestrians on roadways.** — The elements the state must show to prove a violation of § 66-7-339(A) NMSA 1978, are that the defendant was walking along and upon an adjacent roadway, and a sidewalk was provided. *State v. Penman*, 2022-NMCA-065, cert. granted.

**Defendant was entitled to pretrial dismissal of his pedestrians on roadways charge.** — Where defendant was initially detained for violating the pedestrians on roadways statute, § 66-7-339(A) NMSA 1978, and was later arrested for resisting, evading or obstructing an officer, and where baggies containing cocaine, marijuana, and methamphetamine were found where defendant was arrested and in the patrol vehicle where defendant was placed, which resulted in defendant being charged with two counts of possession of a controlled substance, one count of battery upon a peace officer, one count of assault upon a peace officer, one count of resisting, evading or obstructing an officer, one count of pedestrians on roadways, and one count of possession of marijuana, and where defendant claimed that he was entitled to dismissal of his pedestrians on roadways charge because the plain language of § 66-7-339(A) requires a pedestrian to walk along and upon an adjacent roadway to a sidewalk, and merely standing in the middle of a residential street without more, as a matter of law, was insufficient to establish a violation, the district court erred in failing to dismiss the charge prior to trial, because the statute clearly identifies that the conduct subject to penalty is walking along and upon an adjacent roadway when a sidewalk is otherwise available for that purpose. The legislature did not intend for anyone who is observed standing in the middle of the roadway, however briefly and for any possible reason, to be subject to punishment under the statute. *State v. Penman*, 2022-NMCA-065, cert. granted.

**Drivers must anticipate pedestrian's presence and exercise reasonable care.** — Drivers of automobiles and pedestrians both have the right to the use of the highway. The former must anticipate the presence of the latter and exercise reasonable care to avoid injuring them, commensurate with danger reasonably to be anticipated. *Russell v. Davis*, 1934-NMSC-076, 38 N.M. 533, 37 P.2d 536.

**Law reviews.** — For comment on Skeet v. Wilson, 76 N.M. 697, 417 P.2d 889 (1966), see 7 Nat. Resources J. 657 (1967).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 287.

Who is "pedestrian" entitled to rights and subject to duties provided by traffic regulations or judicially stated, 35 A.L.R.4th 1117.

Motorist's liability for signaling other vehicle or pedestrian to proceed, or to pass signaling vehicle, 14 A.L.R.5th 193.

60A C.J.S. Motor Vehicles § 389.

## 66-7-340. Pedestrians soliciting rides or business.

A. No person shall stand in a roadway for the purpose of soliciting a ride, employment or business from the occupant of any vehicle.

B. No person shall stand on or in proximity to a street or highway for the purpose of soliciting the watching or guardng [guarding] of any vehicle while parked or about to be parked on a street or highway.

**History:** 1953 Comp., § 64-7-340, enacted by Laws 1978, ch. 35, § 444.

**ANNOTATIONS**

**Cross references.** — For the penalty assessment for violation, *see* 66-8-116 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 288.

Anti-hitchhiking laws, their construction and effect in action for injury to hitchhiker, 18 A.L.R. 1447, 68 A.L.R.2d 300.

60A C.J.S. Motor Vehicles § 389.

## 66-7-341. Railroad-highway grade crossing violations; all drivers.

A. A person driving a vehicle approaching a railroad-highway grade crossing shall:

(1) obey traffic control devices, crossing gates or barriers or the directions of an enforcement official at the crossing;

(2) stop not more than fifty feet and not less than fifteen feet from the nearest rail of a crossing if:

(a) a train is moving through or blocking the crossing;

(b) a train is plainly visible and approaching the crossing within hazardous proximity to the crossing;

(c) the sound of a train's warning signal can be heard; or

(d) a traffic control device, crossing gate, barrier or light or an enforcement official signals the driver to stop; and

(3) proceed through the railroad-highway grade crossing only if it is safe to completely pass through the entire railroad-highway grade crossing without stopping.

B. A person shall not:

(1) drive a vehicle through, around or under a crossing gate or barrier at a railroad-highway grade crossing while the gate or barrier is closed or being opened or closed;

(2) drive onto the railroad-highway grade crossing and stop; or

(3) enter a crossing if the vehicle being driven has insufficient undercarriage clearance to pass over the crossing.

C. The penalty assessment for violation of this section is included in Section 66-8-116 NMSA 1978.

**History:** 1978 Comp., § 66-7-341, enacted by Laws 2003, ch. 51, § 8.

## ANNOTATIONS

**Repeals and reenactments.** — Laws 2003, ch. 51, § 8 repealed former 66-7-341 NMSA 1978, as enacted by Laws 1978, ch. 35, § 445, and enacted the above section, effective March 19, 2003.

**Cross references.** — For the definition of "railroad sign or signal", *see* 66-1-4.15 NMSA 1978.

For the penalty assessment for violation, *see* 66-8-116 NMSA 1978.

**Failure to stop negligence as matter of law.** — Where driver, approaching a four track railroad crossing from a curve in the street, failed to stop, look and listen, and then drove blindly over three tracks and into the path of an oncoming train on the fourth track

before being stopped by it, he was guilty of negligence, as a matter of law. *Blewett v. Barnes*, 1957-NMSC-024, 62 N.M. 300, 309 P.2d 976.

**Violation of statute for benefit of drivers, their passengers, and railroad operation personnel is negligence per se.** — Where plaintiff, while driving her vehicle, violated this section by failing to stop between 50 and 15 feet before the railroad crossing, suffered the type of harm sought to be prevented through promulgation of the statute, and was within the class of persons to be protected under this section, the district court properly granted defendants' motion for summary judgment regarding negligence per se. *Paez v. Burlington N. Santa Fe Ry.*, 2015-NMCA-112.

**Jury question when direction of travel of train misleading.** — In case where train, running backwards, hit decedent's car, and where the evidence and circumstances indicate that reasonable persons could entertain different opinions as to whether the decedent was reasonably misled as to the direction of travel of the train, Section 64-18-40, 1953 Comp. (similar to this section), is not a bar to submission to the jury of the issue. *Lester v. Atchison, T. & S.F. Ry.*, 275 F.2d 42 (10th Cir. 1960).

**Last clear chance if trainman discovers peril and can stop.** — Evidence that, notwithstanding the plaintiff's own negligence in entering a four track railroad crossing heedlessly, which preceded it in point of time, an exercise of due care and caution by the defendant train operator after discovering the perilous situation to which that negligence had exposed the plaintiff very well may have avoided the injury and consequent damage to the plaintiff was ample support for finding for the plaintiff under the last clear chance doctrine. *Blewett v. Barnes*, 1957-NMSC-024, 62 N.M. 300, 309 P.2d 976.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 65 Am. Jur. 2d Railroads §§ 250, 335, 361.

Failure of occupants of motor vehicle stalled on railroad crossing to get out and move to place of safety as contributory negligence, 21 A.L.R.2d 742.

Contributory negligence of driver of road vehicle running into train or car standing in highway crossing, 84 A.L.R.2d 813.

Failure of signaling device at crossing to operate as affecting liability of railroad for injury, 90 A.L.R.2d 350.

75 C.J.S. Railroads § 773.

Governmental liability for failure to reduce vegetation obstructing view at railroad crossing or at street or highway intersection. 50 A.L.R.6th 95.

## 66-7-342. All vehicles must stop at certain railroad grade crossings.

The state transportation commission and local authorities with the approval of the state transportation commission are hereby authorized to designate particularly dangerous highway grade crossings of railroads and to erect stop signs at those crossings. When such stop signs are erected, the driver of any vehicle shall stop within fifty feet but not less than fifteen feet from the nearest rail of the railroad and shall proceed only upon exercising due care.

**History:** 1953 Comp., § 64-7-342, enacted by Laws 1978, ch. 35, § 446; 2003, ch. 142, § 21.

**ANNOTATIONS**

**Cross references.** — For the penalty assessment for violation, *see* 66-8-116 NMSA 1978.

**The 2003 amendment,** effective July 1, 2003, substituted "transportation commission" for "highway commission".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 65 Am. Jur. 2d Railroads § 335.

Duty of automobilist to shut off motor at railroad crossing, 54 A.L.R. 542.

Duty of driver whose view is obstructed to stop at railroad crossing before crossing, 56 A.L.R. 647, 91 A.L.R. 1055.

75 C.J.S. Railroads § 773.

## 66-7-343. Railroad-highway grade crossing violations; certain vehicles required to always stop; exceptions.

A. Except as set forth in Subsection D of this section, a driver of a vehicle carrying passengers for hire, a school bus carrying school children or a vehicle carrying hazardous materials, radioactive or explosive substances or flammable liquids as cargo or as part of its cargo, before entering a railroad-highway grade crossing, is required to stop no more than fifty feet and no less than fifteen feet from the nearest rail of the railroad.

B. While stopped, the driver shall:

(1) look and listen in both directions along the track for an approaching train and for signals indicating that a train is approaching;

(2) determine it is safe to proceed completely through the railroad-highway grade crossing before entering it; and

(3) set the vehicle in a gear sufficiently low that gears will not need to be shifted before exiting the railroad-highway grade crossing.

C. A driver shall not shift gears while in a railroad-highway grade crossing.

D. A driver of a vehicle carrying passengers for hire, a school bus carrying school children or a vehicle carrying hazardous materials, radioactive or explosive substances or flammable liquids as cargo or as part of its cargo is not required to stop at:

(1) a railroad-highway grade crossing where a police officer directs traffic to proceed;

(2) a railroad-highway grade crossing where a stop-and-go traffic light controls movement of traffic;

(3) a railroad-highway grade crossing used exclusively for industrial switching purposes, within a business district as defined in Section 66-1-4.2 NMSA 1978;

(4) a railroad-highway grade crossing where use of the railroad has been abandoned and there is a sign indicating that the railroad has been abandoned; or

(5) an industrial or spur line railroad-highway grade crossing marked with a sign reading "exempt crossing" that has been designated as exempt by appropriate state or local authorities.

E. Penalties for violation of this section are included in Section 66-8-116 NMSA 1978.

**History:** Laws 2003, ch. 51, § 9.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 2003, ch. 51, § 8 repealed former 66-7-341 NMSA 1978, as enacted by Laws 1978, ch. 35, § 445, and enacted the above section, effective March 19, 2003.

**Cross references.** — For general definitions of the classifications used in this section, *see* 66-1-4 to 66-1-4.20 NMSA 1978.

For the penalty assessment for violation, *see* 66-8-116 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 65 Am. Jur. 2d Railroads § 335.

75 C.J.S. Railroads § 773.

## 66-7-344. Moving heavy equipment at railroad grade crossings.

A. No person shall operate or move any crawler-type tractor, steam shovel, derrick, roller or any equipment or structure having a normal operating speed of ten or less miles per hour or a vertical body or load clearance of less than one-half inch per foot of the distance between any two adjacent axles or in any event of less than nine inches, measured above the level surface of a roadway, upon or across any tracks at a railroad grade crossing without first complying with this section.

B. Notice of any such intended crossing shall be given to a station agent of such railroad and a reasonable time be given to such railroad to provide proper protection at such crossing.

C. Before making any such crossing the person operating or moving any such vehicle or equipment shall first stop the same not less than fifteen feet nor more than fifty feet from the nearest rail of such railroad and while so stopped shall listen and look in both directions along such track for any approaching train and for signals indicating the approach of a train, and shall not proceed until the crossing can be made safely.

D. No such crossing shall be made when warning is given by automatic signal or crossing gates or a flagman or otherwise of the immediate approach of a railroad train or car. If a flagman is provided by the railroad, movement over the crossing shall be under his direction.

E. This section shall not apply to the normal movement of farm equipment in the regular course of farm operation.

**History:** 1953 Comp., § 64-7-344, enacted by Laws 1978, ch. 35, § 448.

**ANNOTATIONS**

**Cross references.** — For definitions applicable to this section, *see* 66-1-4 to 66-1-4.20 NMSA 1978.

For the penalty assessment for violation, *see* 66-8-116 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Liability for personal injuries by trailer, 48 A.L.R. 939.

75 C.J.S. Railroads § 773.

## 66-7-345. Authority to designate through highways and stop and yield intersections.

A. The state transportation commission, with reference to state and county highways, and local authorities, with reference to other highways under their jurisdiction, may designate through highways and erect stop signs or yield signs at specified entrances thereto or may designate any intersection as a stop intersection or as a yield

intersection and erect stop signs or yield signs at one or more entrances to the intersection.

B. Preferential right of way at an intersection may be indicated by stop signs or yield signs as authorized in the Motor Vehicle Code [66-1-1 NMSA 1978].

C. Except when directed to proceed by a police officer or traffic-control signal, every driver of a vehicle approaching a stop intersection indicated by a stop sign shall stop before entering the crosswalk on the near side of the intersection or, in the event there is no crosswalk, shall stop at a clearly marked stop line, but if none, then at the point nearest the intersecting roadway before entering the intersection.

D. The driver of a vehicle approaching a yield sign, if required for safety to stop, shall stop before entering the crosswalk on the near side of the intersection or, in the event there is no crosswalk, at a clearly marked stop line, but if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway.

**History:** 1953 Comp., § 64-18-44, enacted by Laws 1965, ch. 91, § 3; recompiled as 1953 Comp., § 64-7-345, by Laws 1978, ch. 35, § 449; 2003, ch. 142, § 22.

## ANNOTATIONS

**Repeals and reenactments.** — Laws 1965, ch. 91, § 3, repealed 64-18-44, 1953 Comp., relating to the requirement that all vehicles and street cars must stop at stop signs, and enacted the above section.

**Cross references.** — For joint state and local authority with respect to school crossings, *see* 66-7-336 NMSA 1978.

For the penalty assessment for violation, *see* 66-8-116 NMSA 1978.

**The 2003 amendment,** effective July 1, 2003, substituted "transportation commission" for "highway commission" in Subsection A.

**Speeding and running stop sign are different offenses** with different penalties. *United States v. Clemente E.*, 392 F.3d 1164 (10th Cir. 2004).

**Stop sign does not create a "speed limit".** *United States v. Clemente E.*, 392 F.3d 1164 (10th Cir. 2004).

**Provision applicable to animal powered conveyance.** — Section 64-18-29, 1953 Comp. (similar to Section 66-7-330 NMSA 1978), and this section, when read along with Section 64-15-6, 1953 Comp. (similar to Section 66-7-7 NMSA 1978), provide that persons riding animals or driving animal drawn vehicles must stop before entering a through highway or before entering an intersection where a stop sign is posted, and

shall yield the right-of-way to other vehicles approaching the intersection. *Knox v. Trujillo*, 1963-NMSC-132, 72 N.M. 345, 383 P.2d 823.

**Reasonable basis to stop defendant for failing to stop at a stop sign.** — Where a patrol officer observed defendant's vehicle approach a four-way intersection at a high rate of speed, and upon reaching the intersection, defendant's vehicle went past the stop sign and into the intersection before coming to a complete stop, and where the officer activated his emergency lights and pulled defendant over for failing to stop at the stop sign, and as a result, obtained evidence that led to defendant's arrest and conviction for driving while intoxicated, the district court did not err in finding that there was reasonable suspicion for the officer to pull defendant over for a traffic violation, because the record, viewed in the light most favorable to the district court's ruling, includes sufficient evidence to support the district court's finding that the officer had an objectively reasonable basis to stop defendant for violating 66-7-345(C) NMSA 1978. *State v. Martinez*, 2018-NMSC-007, *rev'g* 2015-NMCA-051, 348 P.3d 1022.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 234, 251, 252, 255.

60A C.J.S. Motor Vehicles §§ 359, 360; 61A C.J.S. Motor Vehicles § 714(2), (3).

Governmental liability for failure to reduce vegetation obstructing view at railroad crossing or at street or highway intersection. 50 A.L.R.6th 95.

## 66-7-346. Stop before emerging from alley or private driveway.

The driver of a vehicle within a business or residence district emerging from an alley, driveway or building shall stop such vehicle immediately prior to driving onto a sidewalk or the sidewalk area extending across any alleyway or driveway, and shall yield the right-of-way to any pedestrian as may be necessary to avoid collision, and upon entering the roadway shall yield the right-of-way to all vehicles approaching on said roadway.

**History:** 1953 Comp., § 64-7-346, enacted by Laws 1978, ch. 35, § 450.

**ANNOTATIONS**

**Cross references.** — For definitions applicable to this section, *see* 66-1-4 to 66-1-4.20 NMSA 1978.

For yielding right-of-way before entering highway, *see* 66-7-331 NMSA 1978.

For the penalty assessment for violation, *see* 66-8-116 NMSA 1978.

**Exit from a business parking lot is a driveway.** — Where defendant was driving out of a parking lot in a business district; the parking lot had an area for parking vehicles

and a path for vehicular travel that allowed patrons ingress and egress to a roadway; a sidewalk spanned the access point that defendant was exiting between the roadway and the private property lines; and defendant stopped on, rather than before, the sidewalk area, defendant violated Section 66-7-346 NMSA 1978 because the location where defendant was exiting the parking lot was a driveway. *State v. Scharff*, 2012-NMCA-087, 284 P.3d 447, cert. denied, 2012-NMCERT-007.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 242.

60A C.J.S. Motor Vehicles § 345; 61A C.J.S. Motor Vehicles § 714(2), (3).

## 66-7-347. Overtaking and passing school bus.

A. The driver of a vehicle upon approaching or overtaking from either direction any school bus which has stopped on the roadway, with special school bus signals in operation, for the purpose of receiving or discharging any school children, shall stop the vehicle at least ten feet before reaching the school bus and shall not proceed until the special school bus signals are turned off, the school bus resumes motion or until signaled by the driver to proceed.

B. Every bus used for the transportation of school children shall bear upon the front and rear thereof a plainly visible sign containing the words "School Bus" in letters not less than eight inches in height.

C. The driver of a vehicle upon a highway with separate roadways need not stop upon meeting or passing a school bus which is on a different roadway or when upon a controlled-access highway and the school bus is stopped in a loading zone which is a part of or adjacent to such highway and where pedestrians are not permitted to cross the roadway.

**History:** 1953 Comp., § 64-7-347, enacted by Laws 1978, ch. 35, § 451.

**ANNOTATIONS**

**Cross references.** — For the definition of "school bus", *see* 66-1-4.16 NMSA 1978.

For the penalty assessment for violation of this section's directives, *see* 66-8-116 NMSA 1978.

For authority to promulgate regulations governing design and operation of school buses, *see* 22-16-2 and 22–16–11 NMSA 1978.

For covering and removing markings on school buses when used for other than pupil transportation or when sold, *see* 22-16-9 NMSA 1978.

For using buses for public transportation emergency, *see* 22-17-1 NMSA 1978 et seq.

**Violation of section is negligence per se.** — This section was enacted to protect school children boarding or alighting from a school bus from injury from oncoming motorists. Consequently, one who violates it is guilty of negligence per se. *Hernandez v. Brooks*, 1980-NMCA-056, 95 N.M. 670, 625 P.2d 1187, cert. quashed, 94 N.M. 675, 615 P.2d 992.

**School bus itself controls traffic where no traffic-control devices.** — The legislature recognized that school buses are usually required to discharge school children at places where there are no traffic controls. It seems clear that, recognizing this fact, the legislature, in order that there always be traffic controls for the safety of school children, provided that the school bus itself should control the traffic where no mechanical or electrical traffic controls are provided. *Hayes v. Hagemeier*, 1963-NMSC-095, 75 N.M. 70, 400 P.2d 945.

**Bus signals not to protect children at traffic-controlled intersections.** — It is implicit in Section 64-18-46, 1953 Comp. (similar to this section), that discharged school children shall remain off the traveled portion of the roadway and proceed off the roadway to the pedestrian crosswalk when they are discharged from the bus at a traffic-controlled intersection. Section 64-18-46, 1953 Comp., does not contemplate that the bus signals provide the protection for such discharged children in crossing the roadway at traffic-controlled intersections. *Hayes v. Hagemeier*, 1963-NMSC-095, 75 N.M. 70, 400 P.2d 945.

**Prohibition against passing stopped bus restricted to stops on highway.** — The prohibition against passing a stopped bus, set forth in Section 64-18-46, 1953 Comp. (similar to this section), is clearly restricted to stops on a highway for purpose of discharging or receiving children outside a business or residential area. 1957 Op. Att'y Gen. No. 57-235.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 269.

## 66-7-348. Special lighting equipment on school buses.

A. The director is authorized to adopt standards and specifications applicable to lighting equipment on and special warning devices to be carried by school buses consistent with the provisions of the Motor Vehicle Code [66-1-1 NMSA 1978] and supplemental thereto, except that the standards and specifications may designate and permit the use of flashing warning signal lights on school buses for the purpose of indicating when children are boarding or alighting from any school bus. Such standards and specifications shall correlate with and, so far as possible, conform to specifications approved by the society of automotive engineers.

B. It is unlawful to operate any flashing warning signal light on any school bus except when the school bus is stopped or is about to stop on a roadway for the purpose of permitting school children to board or alight from the school bus.

**History:** 1953 Comp., § 64-7-348, enacted by Laws 1978, ch. 35, § 452.

**ANNOTATIONS**

**Cross references.** — For special restrictions on lamps, *see* 66-3-835 NMSA 1978.

**Legislature intended these restrictions to only be operative outside residential** and business districts, where vehicle speeds are apt to be greater and where the danger to children is accordingly greater. 1957 Op. Att'y Gen. No. 57-235.

## 66-7-349. Stopping, standing or parking outside of business or residence districts.

A. Upon any highway outside of a business or residence district, no person shall stop, park or leave standing a vehicle, whether attended or unattended, upon the paved or main-traveled part of the highway when it is practicable to stop, park or leave the vehicle off such part of the highway, but in every event an unobstructed width of the highway opposite a standing vehicle shall be left for the free passage of other vehicles and a clear view of such stopped vehicles shall be available from a distance of two hundred feet in each direction upon the highway.

B. Subsection A of this section does not apply to the driver of a vehicle that is disabled while on the paved or main-traveled portion of a highway in such manner and to such extent that it is impossible to avoid stopping and temporarily leaving the disabled vehicle in that position.

C. The state highway and transportation department, unless otherwise directed by an investigating police officer, or a police officer may remove or cause to be removed a vehicle or other obstruction from the paved or main-traveled part of a highway to the nearest place of safety if the vehicle or other obstruction obstructs traffic or poses a traffic hazard.

**History:** 1953 Comp., § 64-7-349, enacted by Laws 1978, ch. 35, § 453; 1999, ch. 96, § 1.

**ANNOTATIONS**

**Cross references.** — For the definitions of "business district" and "residence district", *see* 66-1-4.2 NMSA 1978 and 66-1-4.15 NMSA 1978, respectively.

For regulations concerning buses or trucks stopped or disabled on highways, *see* 66-3-851 to 66-3-857 NMSA 1978.

For the penalty assessment for violation of this section, *see* 66-8-116 NMSA 1978.

For the parking privilege for passenger motor vehicle of disabled person, *see* 3-51-46 NMSA 1978.

**The 1999 amendment,** effective June 18, 1999, added "Subsection A of" at the beginning of Subsection B; added Subsection C; and made minor stylistic changes.

**Purpose of the phrase "or leave standing."** — By the use of the phrase "or leave standing" the Legislature intended to make illegal any stopping and leaving of a vehicle on the highway for any length of time, unless, of course, as stated in the statute, the conditions be such that the car cannot be moved off the highway. *Duncan v. Madrid*, 1940-NMSC-027, 44 N.M. 249, 101 P.2d 382

**Violation is negligence per se.** — As it is foreseeable that blocking the highway may cause other persons to have accidents, a violation of Section 64-18-49, 1953 Comp. (similar to this section), which prohibits such blocking is negligence per se. *Kelly v. Montoya*, 1970-NMCA-063, 81 N.M. 591, 470 P.2d 563.

**Driver must always park off highway when practical** to do so; the other requirements of clear view and sufficient passing space are not pertinent unless and until it is shown that it is impractical to park off the highway at the particular place in question. *Horrocks v. Rounds*, 1962-NMSC-048, 70 N.M. 73, 370 P.2d 799.

**If impractical for car to park entirely off highway,** it is not a violation of the provisions of Section 64-18-49, 1953 Comp. (similar to this section), for it to be parked partially or entirely on the highway, regardless of the reason for stopping, so long as the other mandatory provisions of the statute are met; i.e., that an unobstructed width of highway opposite the standing vehicle is left for the free passage of other vehicles and a clear view of such stopped vehicle is available for a distance of 200 feet in each direction. *Horrocks v. Rounds*, 1962-NMSC-048, 70 N.M. 73, 370 P.2d 799.

**Truck negligently stopped on highway has duty to warn others.** — Having had the opportunity to steer his truck to the side of the highway when it began chugging, the statute imposed upon the defendant the duty of so doing. It was this negligence of the defendant, and not any impracticability of driving off of the lane of traffic and stopping his truck as he did that caused it to stop on the paved portion of the highway, and the defendant, after he found himself unable to move his truck, owed the duty to plaintiffs and others approaching the same, to exercise reasonable care to warn them of their peril. *Gutierrez v. Koury*, 1953-NMSC-109, 57 N.M. 741, 263 P.2d 557.

**Negligence per se to park truck on highway without flares.** — Where driver stopped truck without displaying flares on main traveled portion of highway at point where it was not impracticable to have parked it off the pavement, and backed truck up without observing whether it could be done with safety, the violation of statutory provisions

constituted negligence per se. *Chandler v. Battenfield*, 1951-NMSC-054, 55 N.M. 361, 233 P.2d 1047.

**Stopping on pavement.** — The only excuse for stopping on the pavement is an emergency or exigency which leaves no other choice. *Turner v. Silver*, 1978-NMCA-107, 92 N.M. 313, 587 P.2d 966, cert. denied, 92 N.M. 260, 586 P.2d 1089.

**Vehicle is "disabled"** when it runs out of gasoline. *Turner v. Silver*, 1978-NMCA-107, 92 N.M. 313, 587 P.2d 966, cert. denied, 92 N.M. 260, 586 P.2d 1089.

**Negligence per se does not entitle party to directed verdict.** — In a wrongful death action that arose from an automobile collision involving defendant's automobile which was standing without lights, a violation of Section 64-18-49, 1953 Comp. (similar to this section), the court told the jury that if they found that the defendant violated this provision he was guilty of negligence per se. Establishment of defendant's negligence per se did not entitle plaintiff to a directed verdict. However, it was error for the court to refuse an instruction that in cases of willful and wanton conduct the defense of contributory negligence is to be disregarded. *Boatright v. Sclivia*, 421 F.2d 949 (10th Cir. 1970).

**Violation proper question for jury.** — Violations of Sections 64-18-4, 1953 Comp. (similar to Section 66-7-305 NMSA 1978) (driving so slow as to impede traffic), 64-18-49, 1953 Comp. (similar to this section) (stopping on a highway), and 66-7-318 NMSA 1978 (following too closely), which were enacted for the benefit of the public, were proper questions for jury. *Archuleta v. Johnston*, 1971-NMCA-158, 83 N.M. 380, 492 P.2d 997, cert. denied, 83 N.M. 379, 492 P.2d 996; *Turner v. Silver*, 1978-NMCA-107, 92 N.M. 313, 587 P.2d 966, cert. denied, 92 N.M. 260, 586 P.2d 1089. .

**Whether stopping negligence for trier of facts.** — If motorist's vision becomes completely obscured due to a dust storm, the situation certainly imposes the duty to stop. Whether stopping upon the main traveled portion of the highway when it was practicable to stop off the highway was negligence was issuable and for the trier of facts. *Williams v. Neff*, 1958-NMSC-071, 64 N.M. 182, 326 P.2d 1073.

**Unavoidable accident doctrine inapplicable where driver's own negligence created emergency.** — Where the emergency or perilous situation is created through the driver's own negligence, he cannot avoid liability for injury on the ground that his acts were done in the stress of emergency and the court committed reversible error by instructing on unavoidable accident. *Horrocks v. Rounds*, 1962-NMSC-048, 70 N.M. 73, 370 P.2d 799.

**Blocking of road by cars was not disorderly conduct under Section 30-20-1 NMSA 1978.** Section 64-18-49, 1953 Comp. (similar to this section), makes such conduct a separate and specified offense. If a road were blocked, the charge should have been under Section 64-18-49, 1953 Comp. *State v. Florstedt*, 1966-NMSC-208, 77 N.M. 47, 419 P.2d 248.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 271.

When is motor vehicle "disabled" or the like within exception to statute regulating parking or stopping, 15 A.L.R.2d 909.

Construction and effect in civil actions of statute, ordinance or regulation requiring vehicles to be stopped or parked parallel with, or within certain distance of, curb, 17 A.L.R.2d 582.

Liability for injury or damage growing out of motor vehicle pulling out from parked position, 29 A.L.R.2d 107.

Right to park vehicles on private way, 37 A.L.R.2d 944.

Liability of owner or operator of automobile for injury to one assisting in extricating or starting his stalled or ditched car, 3 A.L.R.3d 780.

Liability of motorist colliding with person engaged about stalled or disabled vehicle on or near highway, 27 A.L.R.3d 12.

Applicability of last clear chance doctrine to collision between moving and stalled, parked or standing motor vehicle, 34 A.L.R.3d 570.

Construction of statute as to parking or stopping motor vehicle on highway without flares, 37 A.L.R.3d 778.

60A C.J.S. Motor Vehicles §§ 330 to 333; 61A C.J.S. Motor Vehicles § 714(1).

## 66-7-350. Officers authorized to remove illegally stopped vehicles.

A. Whenever any police officer finds a vehicle standing upon a highway in violation of any of the foregoing provisions of Sections 66-7-349 through 66-7-352 NMSA 1978, such officer is hereby authorized to move such vehicle, or require the driver or other person in charge of the vehicle to move the same, to a position off the paved or main-traveled part of such highway.

B. Whenever any police officer finds a vehicle unattended upon any bridge or causeway or in any tunnel where such vehicle constitutes an obstruction to traffic, such officer is hereby authorized to provide for the removal of such vehicle to the nearest garage or other place of safety.

C. No driver of any vehicle shall permit said vehicle to remain unattended on or adjacent to any public road, highway or highway right-of-way of the state for a longer period than twenty-four hours without notifying the state police or sheriff's office of the county where said vehicle is parked or said vehicle shall be deemed abandoned. The

state police or sheriff's officer may cause all such abandoned vehicles to be removed and the owner of the vehicle shall be required to pay all costs incident to the removal of said vehicle, provided that wrecked vehicles may be removed at any time and without regard to the twenty-four hour period hereinbefore provided.

D. Whenever an officer shall order a dealer or wrecker to remove from a highway, or territory adjacent thereto, any damaged or abandoned vehicle the officer shall at the time issue signed and dated instructions in writing to the dealer or wrecker specifically stating if the vehicle is to be "held for investigation" or if it may be released to the owner.

**History:** 1953 Comp., § 64-7-350, enacted by Laws 1978, ch. 35, § 454.

**ANNOTATIONS**

**Cross references.** — For the penalty assessment for violation, *see* 66-8-116 NMSA 1978.

**Statute unconstitutional** as it does not provide for appropriate notice of the towing of an owner's vehicle and does not provide a meaningful and timely opportunity to challenge the validity of the towing. *Sandia v. Rivera*, 2002-NMCA-057, 132 N.M. 201, 46 P.3d 108.

**Police officer properly authorized removal of wrecked tandem trailer,** even where owner left a flagman at scene of wreck, since the operative effect of the proviso appended to Section 64-18-50, 1953 Comp. (similar to this section), did not require the vehicle to have been unattended. *Trujillo v. Romero*, 1971-NMSC-020, 82 N.M. 301, 481 P.2d 89.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Liability for injury on parking or strip between sidewalk and curb, 19 A.L.R.2d 1053, 98 A.L.R.3d 439.

Validity and construction of statute or ordinance regulating vehicle towing business, 97 A.L.R.3d 495.

State or municipal towing, impounding, or destruction of motor vehicles parked or abandoned on streets or highways, 32 A.L.R.4th 728.

## 66-7-351. Stopping, standing or parking prohibited in specified places.

A. No person shall stop, stand or park a vehicle, except when necessary to avoid conflict with other traffic or in compliance with law or the directions of a police officer or traffic-control device, in any of the following places:

(1) on a sidewalk;

(2) in front of a public or private driveway;

(3) within an intersection;

(4) within fifteen feet of a fire hydrant;

(5) on a crosswalk;

(6) within twenty feet of a crosswalk at an intersection;

(7) within thirty feet upon the approach to any flashing beacon, stop sign or traffic-control signal located at the side of a roadway;

(8) between a safety zone and the adjacent curb or within thirty feet of points on the curb immediately opposite the end [ends] of a safety zone, unless the traffic authority indicates a different length by signs or markings;

(9) within fifty feet of the nearest rail of a railroad crossing;

(10) within twenty feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within seventy-five feet of said entrance, when properly signposted;

(11) alongside or opposite any street excavation or obstruction when stopping, standing or parking would obstruct traffic;

(12) on the roadway side of any vehicle stopped or parked at the edge or curb of a street;

(13) upon any bridge or other elevated structure upon a highway or within a highway tunnel; or

(14) at any place where official signs prohibit stopping.

B. No person shall move a vehicle not lawfully under his control into any such prohibited area or away from a curb such distance as is unlawful.

**History:** 1953 Comp., § 64-7-351, enacted by Laws 1978, ch. 35, § 455.

## ANNOTATIONS

**Cross references.** — For definitions applicable to this section, *see* 66-1-4 to 66-1-4.20 NMSA 1978.

For the penalty assessment for violation, *see* 66-8-116 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 271, 272, 274 to 284.

Parking illegally at or near street corner or intersection as affecting liability for motor vehicle accident, 4 A.L.R.3d 324.

Liability for negligence of doorman or similar attendant in parking patron's automobile, 41 A.L.R.3d 1055.

60A C.J.S. Motor Vehicles §§ 329 to 333; 61A C.J.S. Motor Vehicles § 714(1).

## 66-7-352. Additional parking regulations.

A. Except as otherwise provided in this section, every vehicle stopped or parked upon a roadway where there are adjacent curbs shall be so stopped or parked with the right-hand wheels of such vehicle parallel to and within eighteen inches of the right-hand curb.

B. Local authorities may by ordinance permit parking of vehicles within [with] the left-hand wheels adjacent to and within eighteen inches of the left-hand curb of a one-way roadway.

C. Local authorities may by ordinance permit angle parking on any roadway, except that angle parking shall not be permitted on any federal-aid or state highway unless the state highway commission has determined by resolution or ordered entered in its minutes that the roadway is of sufficient width to permit angle parking without interfering with the free movement of traffic.

D. The state highway commission with respect to highways under its jurisdiction may place signs prohibiting or restricting the stopping, standing or parking of vehicles on any highway where in its opinion, as evidenced by resolution or order entered in its minutes, such stopping, standing or parking is dangerous to those using the highway or where the stopping, standing or parking of vehicles would unduly interfere with the free movement of traffic thereon. Such signs shall be official signs and no person shall stop, stand or park any vehicle in violation of the restrictions stated on such signs.

**History:** 1953 Comp., § 64-7-352, enacted by Laws 1978, ch. 35, § 456.

**ANNOTATIONS**

**Cross references.** — For the penalty assessment for violation, *see* 66-8-116 NMSA 1978.

For parking privilege for passenger motor vehicle of disabled person, *see* 3-51-46 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 275, 276.

Construction and effect in civil actions of statute, ordinance or regulation requiring vehicles to be stopped or parked parallel with, or within certain distance of, curb, 17 A.L.R.2d 582.

Right to park vehicles on private way, 37 A.L.R.2d 944.

Duty and liability of vehicle drivers within parking lot, 62 A.L.R.2d 288.

Liability of owner or driver of double-parked motor vehicle for ensuing injury, death or damage, 82 A.L.R.2d 726.

Liability or recovery in automobile negligence action as affected by absence or insufficiency of lights on parked or standing motor vehicle, 61 A.L.R.3d 13.

60A C.J.S. Motor Vehicles § 334.

## 66-7-352.1. Short title.

Sections 66-7-352.1 through 66-7-352.6 NMSA 1978 may be cited as the "Accessible Parking Standards and Enforcement Act".

**History:** Laws 1983, ch. 45, § 1; 1990, ch. 120, § 36; 2001, ch. 124, § 2; 2007, ch. 319, § 58.

**ANNOTATIONS**

**The 2007 amendment,** effective June 15, 2007, changed the title of the act.

**The 2001 amendment,** effective June 15, 2001, substituted "66-7-352.6 NMSA 1978" for "66-7-352.5 NMSA 1978".

**The 1990 amendment,** effective July 1, 1990, substituted "Sections 66-7-352.1 through 66-7-352.5 NMSA 1978" for "This act".

## 66-7-352.2. Legislative intent.

The policy and intent of this legislature is declared to be as follows:

A. that this legislature finds there is a significant safety hazard for persons with significant mobility limitation crossing through parking lots and that this hazard is greatly reduced when parking is provided adjacent to a building entrance;

B. that commercial and governmental establishments provide reserved parking for persons with significant mobility limitation, thus ensuring full and equal opportunity for those persons to maintain independence and self-respect; and

C. that ultimately society will benefit from the increased interaction of persons with significant mobility limitation with the mainstream that these parking spaces will provide.

**History:** Laws 1983, ch. 45, § 2; 2007, ch. 46, § 49; 2007, ch. 319, § 59.

**ANNOTATIONS**

**2007 amendments.** — Laws 2007, ch. 46, § 49 and Laws 2007, ch. 319, § 59 both enacted amendments to this section. The section was set out as amended by Laws 2007, ch. 319, § 59. *See* 12-1-8 NMSA 1978.

Laws 2007, ch. 319, § 59, effective June 15, 2007, changed "mobility-impaired persons" to "persons with significant mobility limitation".

Laws 2007, ch. 46, § 49, effective June 15, 2007, made non-substantive changes and provided:

"66-7-352.2. Legislative intent.

The policy and intent of the legislature is declared to be as follows:

A. that the legislature finds there is a significant safety hazard for persons with a physical disability crossing through parking lots and that this hazard is greatly reduced when parking is provided adjacent to a building entrance;

B. that many commercial and governmental establishments now provide reserved parking for persons with a disability, ensuring full and equal opportunity for persons with a disability to maintain independence and self-respect; and

C. that ultimately society will benefit from the increased interaction of persons with a disability with the mainstream that these parking spaces will provide."

**Meaning of "this legislature".** — The term, "this legislature," referred to in the introductory language and in Subsection A, apparently means the 36th legislature, 1st session, which enacted the Disabled Parking Standards and Enforcement Act (66-7-352.1 to 66-7-352.5 NMSA 1978).

## 66-7-352.3. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1990, ch. 120, § 45 repealed 66-7-352.3 NMSA 1978, as enacted by Laws 1983, ch. 45, § 3, relating to definitions, effective July 1, 1990. For provisions of former section, *see* the 1989 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* 66-1-4.1 to 66-1-4.20 NMSA 1978.

## 66-7-352.4. Parking lots; standards.

A. Every parking lot coming under the provisions of the Accessible Parking Standards and Enforcement Act shall have designated and maintained accessible parking spaces for persons with significant mobility limitation as provided in Subsection B of this section. No building permit shall be issued by any local government for the construction or substantial renovation of a commercial building inviting public access unless the parking lot has designated accessible parking spaces for persons with significant mobility limitation as delineated in Subsection B of this section.

B. The minimum numbers of designated accessible parking spaces for persons with significant mobility limitation are as follows:

| TOTAL PARKING SPACES IN LOT | REQUIRED MINIMUM NUMBER OF PARKING SPACES FOR PERSONS WITH SIGNIFICANT MOBILITY LIMITATION |
|---|---|
| 1 to 25 | 1 |
| 26 to 35 | 2 |
| 36 to 50 | 3 |
| 51 to 100 | 4 |
| 101 to 300 | 8 |
| 301 to 500 | 12 |
| 501 to 800 | 16 |
| 801 to 1,000 | 20 |
| more than 1,000 | 20, plus 1 for each 100 over 1,000. |

The designated accessible parking spaces for persons with significant mobility limitation shall be located so as to provide the most convenient access to entranceways or to the nearest curb cut. Every parking lot shall have at least one designated accessible parking space for persons with significant mobility limitation designed to accommodate a motor vehicle passenger van, and there shall be a minimum of one such space for every eight designated accessible parking spaces for persons with significant mobility limitation.

C. A sign or other designation posted after July 1, 2010 at an accessible parking space pursuant to this section shall include the language "Violators are subject to a fine and/or towing.".

**History:** Laws 1983, ch. 45, § 4; 1999, ch. 297, § 9; 2007, ch. 319, § 60; 2010, ch. 74, § 4.

**ANNOTATIONS**

**The 2010 amendment,** effective May 19, 2010, in Subsection A, in the first sentence after "shall have designated", added "and maintained"; and added Subsection C.

**The 2007 amendment,** effective June 15, 2007, changed the title of the act and changed "disabled parking space" to "parking space for persons with significant mobility limitation".

**The 1999 amendment,** effective June 18, 1999, deleted "provided that an office of state or local government shall have a minimum of one such parking space" from the end of the first sentence of Subsection A; in Subsection B, in the table, deleted the former first listing which covered 0 to 14 total spaces in a parking lot, substituted "1 to 25" for "15 to 25" in the first column, and substituted "20, plus 1 for each 100 over 1,000" for "20, plus 3 for each additional 1,000" in the second column, and added the last sentence in Subsection B.

## 66-7-352.5. Unauthorized use; penalties.

A. It is unlawful for any person to park a motor vehicle not displaying a special registration plate or a parking placard issued pursuant to Section 66-3-16 NMSA 1978 in a designated accessible parking space for persons with significant mobility limitation.

B. It is unlawful for any person to park a motor vehicle in such a manner so as to block access to:

(1) any part of a curb cut designed for access by persons with significant mobility limitation; or

(2) a designated accessible parking space for persons with significant mobility limitation.

C. A person convicted of violating Subsection A or B of this section is subject to a fine of not less than two hundred fifty dollars ($250) or more than five hundred dollars ($500). Failure to properly display a parking placard or special registration plate issued pursuant to Section 66-3-16 NMSA 1978 is not a defense against a charge of violation of Subsection A or B of this section.

D. A vehicle parked in violation of Subsection A or B of this section is subject to being towed at the expense of the vehicle owner upon authorization by law enforcement personnel or by the property owner or manager of a parking lot.

E. A law enforcement officer may issue a citation or authorize towing of a vehicle for a violation of Subsection A or B of this section regardless of the presence of the driver.

**History:** Laws 1983, ch. 45, § 5; 1993, ch. 187, § 1; 1999, ch. 297, § 10; 2006, ch. 48, § 1; 2007, ch. 319, § 61; 2010, ch. 74, § 5; 2019, ch. 265, § 1.

**ANNOTATIONS**

**The 2019 amendment,** effective June 14, 2019, made it unlawful for any person to park a motor vehicle in such a manner so as to block access to a designated accessible parking space for persons with a significant mobility limitation; and in Subsection B, added new paragraph designation "(1)" and added Paragraph B(2).

**The 2010 amendment,** effective May 19, 2010, added Subsection E.

**The 2007 amendment,** effective June 15, 2007, changed "disabled parking space" to "parking space for persons with significant mobility limitation" and changed "persons with severe mobility impairment" to "persons with significant mobility limitation".

**The 2006 amendment,** effective May 17, 2006, increased the fine from not less than $100 and not more than $300 to not less than $250 and not more than $500 in Subsection C.

**The 1999 amendment,** effective June 18, 1999, substituted "penalties" for "penalty" in the section heading, rewrote Subsection A to the extent that a detailed comparison is impracticable, deleted former Subsection B which stated that a person charged with a violation of Subsection A shall not be determined to have committed an infraction if he produced in court, or demonstrated that he was entitled to, special disabled registration plates, and added present Subsections B to D.

**The 1993 amendment,** effective June 18, 1993, in Subsection A, substituted "fifty-dollar ($50.00)" for "twenty-five dollar ($25.00)" and made a stylistic change in the second sentence.

## 66-7-352.6. Enforcement.

A. State, county and municipal law enforcement personnel may issue citations for violations of Section 66-7-352.5 NMSA 1978 in their respective jurisdictions, whether the violation occurs on public property or private property.

B. Parking enforcement personnel of each of the state educational institutions designated in Article 12, Section 11 of the constitution of New Mexico may issue citations for violations of Section 66-7-352.5 NMSA 1978 within the exterior boundaries of lands under the control of their respective institutions, except portions of those lands that are public highways or streets.

**History:** Laws 2001, ch. 124, § 3; 2006, ch. 48, § 2.

**ANNOTATIONS**

**The 2006 amendment,** effective May 17, 2006, added Subsection B to provide that parking enforcement personnel at state educational institutions may issue citations.

**The Disabled Parking Standards and Enforcement Act** applies to private parking lots where mobility impaired persons use such private property and is enforceable without the need for additional city ordinances. 1983 Op. Att'y Gen. No. 83-08.

## 66-7-353. Unattended motor vehicle.

No person driving or in charge of a motor vehicle shall permit it to stand unattended without first stopping the engine, locking the ignition, removing the key and effectively setting the brake, or placing the transmission in parking position, thereon and, when standing upon any grade, turning the front wheels in such manner that the vehicle will be held by the curb or will leave the highway if the brake fails. A violation of this section shall not mitigate the offense of stealing a motor vehicle, nor shall the provisions of this section or any violation thereof be admissible as evidence in a civil action for the recovery of a stolen motor vehicle, or in any other civil action arising out of the theft of a motor vehicle.

**History:** 1941 Comp., § 68-2460, enacted by Laws 1953, ch. 139, § 114; 1953 Comp., § 64-18-53; Laws 1965, ch. 164, § 1; recompiled as 1953 Comp., § 64-7-353, by Laws 1978, ch. 35, § 457.

**ANNOTATIONS**

**Cross references.** — For parked, stopped or disabled buses or trucks, *see* 66-3-851 to 66-3-857 NMSA 1978.

For the penalty assessment for violation of this section, *see* 66-8-116 NMSA 1978.

**No legislative intent to create duty.** — Because a violation of this section is inadmissible as evidence in any civil action arising out of the theft of a vehicle, the statute does not conclusively demonstrate a legislative intent to create a duty. *Herrera v. Quality Pontiac*, 2003-NMSC-018, 134 N.M. 43, 73 P.3d 181.

**Implicit policy to deter theft.** — By requiring that one in possession of an automobile take reasonable measures to avoid leaving the keys in the ignition, this section implicitly contains a policy to deter theft. *Herrera v. Quality Pontiac*, 2003-NMSC-018, 134 N.M. 43, 73 P.3d 181.

**Theft subsequent to violation of section.** — An owner or one in possession of a vehicle who leaves a key in the ignition of an unattended and unlocked car owes a duty

of ordinary care to those individuals injured in an automobile accident involving the vehicle when a thief steals the car and negligently or criminally causes an accident. *Herrera v. Quality Pontiac*, 2003-NMSC-018, 134 N.M. 43, 73 P.3d 181.

**Law reviews.** — For comment, "The Continuing Debate Over Tort Duty in New Mexico: The Role of Foreseeability and Policy in Herrera v. Quality Pontiac," see 34 N.M. L. Rev. 433 (2004).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 274 to 276.

Liability for injury or damage caused by accidental starting up of parked motor vehicle, 16 A.L.R.2d 979, 43 A.L.R.3d 930, 55 A.L.R.3d 1260.

Duties and liabilities between owners or drivers of parked or parking vehicles, 25 A.L.R.2d 1224.

Liability of owner for injury or damage caused by stranger starting motor vehicle or automotive equipment parked off the street, 45 A.L.R.3d 787.

Liability for personal injury or property damage caused by unauthorized use of automobile which had been parked with keys removed from ignition, 70 A.L.R.4th 276.

60A C.J.S. Motor Vehicles § 336.

## 66-7-354. Limitation on backing.

The driver of a vehicle shall not back it:

A. unless the movement can be made with reasonable safety and without interfering with other traffic; or

B. upon any shoulder or roadway of any controlled-access highway, or upon the exit or entry road of any controlled-access highway.

**History:** 1941 Comp., § 68-2461, enacted by Laws 1953, ch. 139, § 114.5; 1953 Comp., § 64-18-54; Laws 1969, ch. 169, § 8; recompiled as 1953 Comp., § 64-7-354, by Laws 1978, ch. 35, § 458.

**ANNOTATIONS**

**Cross references.** — For the definition of "controlled-access highway", *see* 66-1-4.3 NMSA 1978.

For the penalty assessment for violation, *see* 66-8-116 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 270.

Liability for injury occasioned by backing of motor vehicle in public street or highway, 63 A.L.R.2d 5.

Liability for injury occasioned by backing of motor vehicle from private premises into public street or highway, 63 A.L.R.2d 108.

Liability for injury or damage occasioned by backing of motor vehicle within private premises, 63 A.L.R.2d 184.

Negligence or contributory negligence of driver or occupant of motor vehicle parked or stopped on highway without flares, 67 A.L.R.2d 12.

60A C.J.S. Motor Vehicles § 302.

## 66-7-355. Riding on motorcycles.

A. A person operating a motorcycle, other than an autocycle, shall ride only upon the permanent and regular seat attached thereto, shall have the person's feet upon the footrests provided on the machine and shall not carry any other person nor shall any other person ride on the motorcycle unless it is designed to carry more than one person. If a motorcycle, other than an autocycle, is designed to carry more than one person, the passenger may ride upon the permanent and regular seat if designed for two persons or upon another seat firmly attached to the rear or side of the motorcycle. The passenger shall have the passenger's feet upon the footrests attached for passenger use.

B. A person operating a motorcycle not having a fixed windshield of a type approved by regulation of the secretary shall wear an eye protective device, which may be a faceshield attached to a safety helmet, goggles or safety eyeglasses. All eye protective devices shall be of a type approved by regulations promulgated by the secretary.

C. A person who violates the provisions of this section is guilty of a penalty assessment misdemeanor.

**History:** 1953 Comp., § 64-7-355, enacted by Laws 1978, ch. 35, § 459; 1981, ch. 361, § 25; 1991, ch. 160, § 17; 2015, ch. 53, § 4; 2018, ch. 74, § 48.

**ANNOTATIONS**

**Cross references.** — For the definitions of "motorcycles," *see* 66-1-4.11 NMSA 1978.

For required motorcycle equipment, *see* 66-3-840 and 66-3-842 NMSA 1978.

For off-highway motorcycles, *see* 66-3-1001 to 66-3-1015 NMSA 1978.

**The 2018 amendment,** effective July 1, 2018, provided a penalty for a violation of the provisions of this section, and made technical changes; and added Subsection C.

**The 2015 amendment,** effective June 19, 2015, exempted autocycles from certain motorcycle operating requirements; in Subsection A, in the first sentence, after "motorcycle", added "other than an autocycle", and after "shall have", deleted "his" and added "the person's"; in the second sentence, after "motorcycle", added "other than an autocycle"; and in the last sentence, after "shall have", deleted "his" and added "the passenger's"; and in Subsection B, after "promulgated by the", deleted "director" and added "secretary".

**The 1991 amendment,** effective July 1, 1991, deleted "the operator" preceding "shall not carry" in the first sentence in Subsection A; in Subsection B, substituted "secretary" for "director" in the first sentence and deleted "or windshields" following "protective devices" in the second sentence; and made minor stylistic changes.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 209, 210.

"Motor vehicle" within guest statute, 98 A.L.R.2d 543.

## 66-7-356. Mandatory use of protective helmets.

A. No person under the age of eighteen shall operate a motorcycle unless the person is wearing a safety helmet that is securely fastened on the person's head in a normal manner as headgear and that meets the standards specified by the secretary. The secretary shall adopt rules and regulations establishing standards covering the types of helmets and the specifications therefor and shall establish and maintain a list of approved helmets meeting the standards and specifications of the secretary. No dealer or person who leases or rents motorcycles shall lease or rent a motorcycle to a person under the age of eighteen unless the lessee or renter shows such person a valid driver's license or permit and possesses the safety equipment required of an operator who is under the age of eighteen. No person shall carry any passenger under the age of eighteen on any motorcycle unless the passenger is wearing a securely fastened safety helmet, as specified in this section, meeting the standards specified by the secretary.

B. Failure to wear a safety helmet as required in this section shall not constitute contributory negligence.

C. Autocycles are exempted from the helmet provisions of this section.

**History:** 1953 Comp., § 64-7-356, enacted by Laws 1978, ch. 35, § 460; 1981, ch. 361, § 26; 1991, ch. 192, § 6; 2015, ch. 53, § 5.

## ANNOTATIONS

**Cross references.** — For the penalty for a misdemeanor, *see* 66-8-7 NMSA 1978.

For the penalty for a petty misdemeanor, *see* 31-19-1 NMSA 1978.

**The 2015 amendment,** effective June 19, 2015, exempted autocycles from the helmet requirements of operating a motorcycle; in Subsection A, after the first occurrence of "unless", deleted "he" and added "the person", after the first occurrence of "helmet", added "that is", after "fastened on", deleted "his" and added "the person's", after "headgear and", deleted "meeting" and added "that meets", and changed "director" to "secretary" throughout; and added Subsection C.

**The 1991 amendment,** effective June 14, 1991, deleted former Subsection C which read "Any person violating the provisions of this section is guilty of a petty misdemeanor" and made a minor stylistic change in Subsection A.

**Authority to approve safety helmets not violative of due process.** — The delegation to the commissioner of motor vehicles (now director of the motor vehicle division) of the power to determine what type of helmet should be worn under an ordinance mandating the wearing of approved safety helmets by motorcycle operators did not deprive the appellee of due process nor did the fact that the state commissioner of motor vehicles adopted the standards determined by the testing of a third person make such testing unreasonable. *City of Albuquerque v. Jones*, 1975-NMSC-025, 87 N.M. 486, 535 P.2d 1337.

**Ordinance requiring wearing of helmet appropriate exercise of police power.** — A city ordinance which requires the operator of a motorcycle to wear an approved safety helmet is an appropriate exercise of the city's police power and therefore is constitutional. *City of Albuquerque v. Jones*, 1975-NMSC-025, 87 N.M. 486, 535 P.2d 1337.

**Provision not applicable to all motorcyclists.** — Section 64-18-55.1, 1953 Comp. (similar to this section), requiring the use of a safety helmet does not apply to all motorcyclists. 1970 Op. Att'y Gen. No. 70-43.

**Provision valid exercise of power of parens patriae.** — Requiring minors to wear helmets while riding a motorcycle would perhaps be a valid exercise of the power of parens patriae and would enable the state to protect youths whose judgment might not yet allow them to exercise their individual freedom judiciously with regard to their own safety. 1969 Op. Att'y Gen. No. 69-14.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Validity of traffic regulation requiring motorcyclists to wear protective headgear, 32 A.L.R.3d 1270.

Motorcyclist's failure to wear helmet or other protective equipment as affecting recovery for personal injury or death, 85 A.L.R.4th 365.

Validity of traffic regulations requiring motorcyclists to wear helmets or other protective gear, 72 A.L.R.5th 607.

60 C.J.S. Motor Vehicles § 43.

## 66-7-357. Obstruction to driver's view or driving mechanism.

A. No person shall drive a vehicle when it is so loaded or when there are in the front seat such number of persons, exceeding three, as to obstruct the view of the driver to the front or sides of the vehicle or as to interfere with the driver's control over the driving mechanism of the vehicle.

B. No passenger in a vehicle shall ride in such position as to interfere with the driver's view ahead or to the sides, or to interfere with his control over the driving mechanism of the vehicle.

**History:** 1953 Comp., § 64-7-357, enacted by Laws 1978, ch. 35, § 461.

**ANNOTATIONS**

**Cross references.** — For the penalty assessment for violation, *see* 66-8-116 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 60A C.J.S. Motor Vehicles § 342.

## 66-7-358. Restriction on use of video screens in motor vehicles.

A. It is unlawful to operate in this state any motor vehicle equipped with a video screen upon which images may be projected or shown if the screen is within the normal view of the driver of the motor vehicle unless the video screen is used solely as an aid to the driver in the operation of the vehicle.

B. A person who violates the provisions of this section is guilty of a penalty assessment misdemeanor.

C. As used in this section, "video screen" does not include closed circuit monitors or computer terminal monitors used by law enforcement agencies in law enforcement motor vehicles.

**History:** 1953 Comp., § 64-7-358, enacted by Laws 1978, ch. 35, § 462; 1989, ch. 318, § 31; 1989, ch. 321, § 1; 2018, ch. 74, § 49.

**ANNOTATIONS**

**Repeals.** — Laws 2018, ch. 74, § 56 repealed Laws 1989, ch. 318, §31, effective July 1, 2018.

**The 2018 amendment,** effective July 1, 2018, provided a penalty for a violation of the provisions of this section, and made technical changes; replaced "television" with "video" throughout the section; added new subsection designation "A."; added a new Subsection B; and added subsection designation "C.".

**1989 Amendments.** — Laws 1989, ch. 321, § 1, effective June 16, 1989, deleted "of whatever type" following "television screen" and added "unless the television is used solely as an aid to the driver in the operation of the vehicle" in the first sentence; added the second sentence; and made minor stylistic changes.

Laws 1989, ch. 318, § 31, effective July 1, 1989, made minor stylistic changes and added "unless the television is solely used as an aid to the driver in the operation of the vehicle" at the end of the first sentence.

## 66-7-359. Driving on mountain highways.

A. The driver of a motor vehicle traveling through defiles or canyons or on mountain highways shall hold the motor vehicle under control and as near the right-hand edge of the highway as reasonably possible.

B. A person who violates the provisions of this section is guilty of a penalty assessment misdemeanor.

**History:** 1953 Comp., § 64-7-359, enacted by Laws 1978, ch. 35, § 463; 1989, ch. 318, § 32; 2018, ch. 74, § 50.

**ANNOTATIONS**

**The 2018 amendment,** effective July 1, 2018, provided a penalty for a violation of the provisions of this section, and made technical changes; added new subsection designation "A."; and added Subsection B.

**The 1989 amendment,** effective July 1, 1989, made a minor stylistic change and deleted "and, upon approaching any curve where the view is obstructed within a distance of two hundred feet along the highway, shall give audible warning with the horn of such motor vehicle" at the end of the section.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Passing on hill in violation of statute, 60 A.L.R.2d 211.

Duty and liability with respect to giving audible signal where driver's view ahead obstructed at curve or hill, 16 A.L.R.3d 897.

60A C.J.S. Motor Vehicles § 246.

## 66-7-360. Coasting prohibited.

A. The driver of any motor vehicle, when traveling upon a downgrade, shall not coast with the clutch disengaged.

B. A person who violates the provisions of this section is guilty of a penalty assessment misdemeanor.

**History:** 1941 Comp., § 68-2466, enacted by Laws 1953, ch. 139, § 117; 1953 Comp., § 64-18-59; recompiled as 1953 Comp., § 64-7-360, by Laws 1978, ch. 35, § 464; 2018, ch. 74, § 51.

**ANNOTATIONS**

**The 2018 amendment,** effective July 1, 2018, provided a penalty for a violation of the provisions of this section, and made technical changes; added new subsection designation "A."; and added Subsection B.

## 66-7-361. Following fire apparatus and driving through safety zone prohibited.

A. The driver of any vehicle other than one on official business shall not follow any fire apparatus traveling in response to a fire alarm closer than five hundred feet, or drive into or park such vehicle within the block where fire apparatus has stopped in answer to a fire alarm.

B. No vehicle shall at any time be driven through or within a safety zone.

**History:** 1953 Comp., § 64-7-361, enacted by Laws 1978, ch. 35, § 465.

**ANNOTATIONS**

**Cross references.** — For the definition of "safety zone", *see* 66-1-4.16 NMSA 1978.

For authorized emergency vehicles, *see* 66-7-6 NMSA 1978.

## 66-7-362. Crossing fire hose.

No vehicle shall be driven over any unprotected hose of a fire department when laid down on any street or private driveway, to be used at any fire or alarm of fire, without the consent of the fire department official in command.

**History:** 1941 Comp., § 68-2468, enacted by Laws 1953, ch. 139, § 119; 1953 Comp., § 64-18-61; recompiled as 1953 Comp., § 64-7-362, by Laws 1978, ch. 35, § 466.

## 66-7-363. Animals on highway; highway fencing.

A. It is unlawful for any person, during the hours of darkness, to ride a horse or other animal upon the traveled portion of any highway that is normally used by motor vehicles.

B. It is unlawful for any person negligently to permit livestock to wander or graze upon any fenced highway at any time or, during the hours of darkness, to drive livestock along or upon any highway that is normally used by motor vehicles.

C. Owners of livestock ranging in pastures through which unfenced roads or highways pass shall not be liable for damages by reason of injury or damage to persons or property occasioned by collisions of vehicles using the roads and highways and livestock ranging in the pastures unless the owner of the livestock is guilty of negligence other than allowing livestock to range in the pasture.

D. As the department of transportation's annual budget permits, the department of transportation shall:

(1) construct, inspect regularly and maintain fences along all highways under its jurisdiction and provide cattle underpasses, water pipelines and cattle guards as the department of transportation may deem necessary, unless it makes a fact determination that no livestock can enter the highway from a portion left unfenced; and

(2) post proper signs along all highways under its jurisdiction that are not fenced on both sides and that are located adjacent to property containing livestock. The signs shall be located at intervals of not more than two miles along such unfenced highways; provided that sign intervals and postings shall be consistent with the department of transportation's specifications for a uniform system of traffic-control devices, subject to traffic safety engineering discretion, and shall warn motorists that loose livestock may be encountered and that caution should be used.

E. A person who violates the provisions of Subsection A or B of this section is guilty of a penalty assessment misdemeanor.

**History:** 1941 Comp., § 68-2469, enacted by Laws 1953, ch. 139, § 119.1; 1953 Comp., § 64-18-62; Laws 1965, ch. 221, § 1; 1966, ch. 44, § 2; recompiled as 1953 Comp., § 64-7-363, by Laws 1978, ch. 35, § 467; 2018, ch. 74, § 52; 2019, ch. 155, § 1.

### ANNOTATIONS

**Cross references.** — For unlawfully permitting livestock upon public highways, *see* 30-8-13 NMSA 1978.

For herd law districts, *see* 77-12-12 NMSA 1978.

**The 2019 amendment,** effective June 14, 2019, required the department of transportation to maintain fencing, cattle guards and livestock warning signs on public highways; in the section heading, added "highway fencing"; added a new Subsection D and redesignated former Subsection D as Subsection E; and in Subsection E, after "provisions of", added "Subsection A or B of".

**The 2018 amendment,** effective July 1, 2018, provided a penalty for a violation of the provisions of this section, and made technical changes; in Subsection C, after "livestock", deleted "or animals", and after "allowing", deleted "his animals" and added "livestock"; and added Subsection D.

**Ordinance conflicted with free range of livestock management.** — Where the county filed a criminal complaint against defendant for allowing defendant's cattle to run at large in violation of a county ordinance that made it unlawful for a person to allow or permit an animal to run at large; and the land in question was not within the boundary of a municipality, a conservancy district, or a military base, the metropolitan court properly dismissed the criminal complaint because the ordinance conflicted with New Mexico's free range or "fence out" approach to livestock management as expressed in Subsection C of Section 66-7-363 NMSA 1978 and Section 77-16-1 NMSA 1978, and the county did not have general authority to disallow the free running of livestock in unincorporated or open areas of their jurisdiction. *Bernalillo Bd. of Co. Comm'rs v. Benavidez*, 2013-NMCA-015, 292 P.3d 482, cert. denied, 2013-NMCERT-012.

**Purpose of this section is to protect the motoring public.** *Mitchell v. Ridgway*, 1966-NMSC-265, 77 N.M. 249, 421 P.2d 778; *Roderick v. Lake*, 1989-NMCA-050, 108 N.M. 696, 778 P.2d 443, cert. denied, 108 N.M. 681, 777 P.2d 1325.

**Applicability of Subsection C.** — The focus of Subsection C is the duty of a livestock owner with respect to animals on a highway. Its application is limited to unfenced highways. *Madrid v. New Mexico State Hwy. Dep't*, 1994-NMCA-006, 117 N.M. 171, 870 P.2d 133, cert. denied, 117 N.M. 215, 870 P.2d 753.

**Owner not liable when had no knowledge horses free.** — Where plaintiff's car collided with defendant's horse on a highway, defendant was not liable where defendant had no knowledge of his horses being on the highway and neighbor's horse released defendant's horses by kicking their gate down. *Steed v. Roundy*, 342 F.2d 159 (10th Cir. 1965).

**Section inapplicable to horse owner using due care in crossing highway.** — Where plaintiff has used due care in preparing to move herd of horses across highway, this section was not applicable. *Knox v. Trujillo*, 1963-NMSC-132, 72 N.M. 345, 383 P.2d 823.

**Basis of livestock owner's liability is negligence.** — The basis of any liability on the part of defendant in wrongful death action where decedent collided with defendant's cow on highway and was killed was negligence. *Tapia v. McKenzie*, 1971-NMCA-128, 83 N.M. 116, 489 P.2d 181.

**Even before the 1965 amendment to this section** (which inserted "negligently" before "to permit" in Subsection B), the word "permit," and the fact that Section 30-8-13 NMSA 1978 was later in time, necessitated that negligence be shown on the part of the owner of livestock running at large upon the public highways before liability will attach against him for damages or losses sustained by others by reason thereof. *Steed v. Roundy*, 342 F.2d 159 (10th Cir. 1965).

**Livestock on range.** — Determination of negligence on part of rancher not required where he permitted bull to be on highway which traversed unfenced pasture land owned by him, even though prior to the accident he had other livestock injured in accidents. *Carrasco v. Calley*, 1968-NMCA-061, 79 N.M. 432, 444 P.2d 617.

**Despite increased frequency of accidents between defendant's cattle and cars** traveling the highway which passed through defendant's open pasturelands, defendant had no duty to either fence the highway or abandon his pastures. He had been relieved by the legislature of responsibility for permitting his cattle to graze in pastures adjacent to the unfenced highway; and furthermore, the fact that there was water available on both sides of the highway operated against any inference of negligence on his part. *Dean v. Biesecker*, 1975-NMSC-021, 87 N.M. 389, 534 P.2d 481.

**Owner of livestock has duty to care for his property** as a reasonable man, and he may be liable for injuries to motorists resulting from collisions with his animals due to his negligence in permitting them to be on the highway. *Mitchell v. Ridgway*, 1966-NMSC-265, 77 N.M. 249, 421 P.2d 778.

**Trier of facts determines** whether owner of animal used reasonable care to restrain his livestock. *Mitchell v. Ridgway*, 1966-NMSC-265, 77 N.M. 249, 421 P.2d 778.

**Law reviews.** — For comment on Grubb v. Wolfe, 75 N.M. 601, 408 P.2d 756 (1965), see 6 Nat. Resources J. 306 (1966).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Owner's liability, under legislation forbidding domestic animals to run at large on highways, as dependent on negligence, 34 A.L.R.2d 1285.

Liability of person, other than owner of animal or owner or operator of motor vehicle, for damage to motor vehicle or injury to person riding therein resulting from collision with domestic animal at large in street or highway, 21 A.L.R.4th 132.

Liability of owner or operator of vehicle for damage to motor vehicle or injury to person riding therein resulting from collision with domestic animal at large in street or highway, 21 A.L.R.4th 159.

Liability of owner of animal for damage to motor vehicle or injury to person riding therein resulting from collision with domestic animal at large in street or highway, 29 A.L.R.4th 431.

Liability of governmental entity for damage to motor vehicle or injury to person riding therein resulting from collision between vehicle and domestic animal at large in street or highway, 52 A.L.R.4th 1200.

Liability for killing or injuring, by motor vehicle, of livestock or fowl on highway, 55 A.L.R.4th 822.

## 66-7-363.1. Department of transportation; agreements with owners or lessees of highway frontage; provisions.

A. Notwithstanding the responsibility of the department of transportation under the provisions of Section 66-7-363 NMSA 1978 to construct, inspect regularly and maintain fences along all highways under its jurisdiction, the department of transportation may enter into an agreement with an owner or lessee of property adjoining a public highway to keep a specified section of the highway frontage unfenced for use as roadside business; provided, however, that the owner or lessee, whoever is party to the agreement, agrees:

(1) to assume full responsibility for constructing and maintaining livestock fencing on the property that the owner or lessee owns or leases in such a manner so as to prevent the entry of livestock onto the highway; and

(2) to be liable for any damage caused by livestock entering upon the public highway from the owner's or lessee's property if the property in question is not fenced or the fencing not maintained pursuant to the agreement with the department of transportation.

B. Nothing in this section shall preclude an owner or lessee who has entered into an agreement with the department of transportation pursuant to this section from also being subject to the penalties set out in Section 66-7-363 NMSA 1978.

**History:** 1953 Comp., § 40A-8-10.1, enacted by Laws 1975, ch. 283, § 1; 1978 Comp., § 30-8-14, recompiled and amended as § 66-7-363.1 by Laws 2019, ch. 155, § 2.

**ANNOTATIONS**

**Recompilations.** — Laws 2019, ch. 155, § 2 recompiled and amended former 30-8-14 NMSA 1978 as 66-7-363.1 NMSA 1978, effective June 14, 2019.

**The 2019 amendment,** effective June 14, 2019, revised the statutory citation for the provision requiring the department of transportation to construct, inspect regularly and maintain fences along all highways under its jurisdiction; and in the section heading, deleted "Highway", and added "of transportation".

**Duty of department under section.** — The department has a duty either to construct fences along all public highways or, as an alternative to fencing, to afford protection to the motoring public in one of the following ways: make a fact determination that no livestock can enter the highway through portions left unfenced under Section 30-8-13B(1) NMSA 1978; place warning signs on unfenced highways under Section 30-8-13B(2) NMSA 1978; or enter agreements with owners or lessees of property where that owner or lessee assumes full responsibility for constructing and maintaining livestock fencing to prevent livestock from entering the highway under Subsection A of this section. *Madrid v. N.M. State Hwy. Dep't*, 1994-NMCA-006, 117 N.M. 171, 870 P.2d 133, cert. denied, 117 N.M. 215, 870 P.2d 753.

**Fence designed with gaps.** — Under 30-8-13 and 30-8-14 NMSA 1978, the highway could be designed with gaps in the fences, provided that the design also include coverage for the gaps by one of the protective measures outlined by those sections. *Madrid v. N.M. State Hwy. Dep't*, 1994-NMCA-006, 117 N.M. 171, 870 P.2d 133, cert. denied, 117 N.M. 215, 870 P.2d 753.

## 66-7-364. Putting injurious material or trash on highway prohibited.

A. No person shall throw or deposit upon a highway any trash, glass bottles, glass, nails, tacks, wire or cans.

B. A person who drops or permits to be dropped or thrown upon any highway any destructive or injurious material or trash shall immediately remove the same or cause it to be removed.

C. A person removing a wrecked or damaged vehicle from a highway shall remove any glass or other injurious substance dropped upon the highway from the vehicle.

D. As used in this section, "trash" means any article or substance that when discarded creates or contributes to an unsanitary, offensive or unsightly condition. "Trash" includes waste food; paper products; cans, bottles and other containers; household furnishings and equipment; parts or bodies of vehicles and other metallic junk or scrap; and collections of ashes, dirt, yard trimmings and other rubbish.

**History:** 1953 Comp., § 64-7-364, enacted by Laws 1978, ch. 35, § 468; 2000, ch. 22, § 1.

**ANNOTATIONS**

**The 2000 amendment,** effective July 1, 2000, in the section heading, substituted "injurious" for "glass or other" and inserted "or trash"; in Subsection A, substituted "deposit upon a highway any trash, glass bottles" for "deposit upon any highway any glass bottle" and deleted "or any other substance likely to injure any person, animal or vehicle upon such highway" from the end of the sentence; in Subsection B, substituted "A" for "Any" and inserted "or trash"; and added Subsection D.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 60A C.J.S. Motor Vehicles §§ 348, 349.

## 66-7-365. Recompiled.

**ANNOTATIONS**

**Recompilations.** — Laws 1993, ch. 226, § 53C recompiled 66-7-365 NMSA 1978, as enacted by Laws 1978, ch. 35, § 469, relating to regulating school buses, as 22-16-11 NMSA 1978, effective July 1, 1993.

## 66-7-366. Occupied moving house trailer.

It is a misdemeanor for any person to:

A. occupy a house trailer while it is being towed upon a highway; or

B. tow a house trailer on any highway when the house trailer is occupied by any person.

**History:** 1953 Comp., § 64-18-65, enacted by Laws 1969, ch. 169, § 9; recompiled as 1953 Comp., § 64-7-366, by Laws 1978, ch. 35, § 470.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1967, ch. 232, § 8, repealed 64-18-65, 1953 Comp., relating to duty of driver of vehicle to stop for blind person crossing highway or street, and Laws 1969, ch. 169, § 9, enacted the above section.

**Cross references.** — For definition of "house trailer", *see* 66-1-4.8 NMSA 1978.

For the penalty for a misdemeanor, *see* 66-8-7 NMSA 1978.

For the penalty assessment for violation, *see* 66-8-116 NMSA 1978.

## 66-7-367. Improper opening of doors.

It is a misdemeanor for any person to:

A. open the door of a vehicle on the side near moving traffic unless:

(1) it is reasonably safe to do so; and

(2) the door can be opened without interfering with the movement of traffic; or

B. leave a door of a vehicle open on the side of the vehicle near moving traffic for a period of time longer than necessary to load or unload passengers.

**History:** 1953 Comp., § 64-18-66, enacted by Laws 1969, ch. 169, § 10; recompiled as 1953 Comp., § 64-7-367, by Laws 1978, ch. 35, § 471.

**ANNOTATIONS**

**Cross references.** — For the penalty for a misdemeanor, *see* 66-8-7 NMSA 1978.

For the penalty assessment for violation, *see* 66-8-116 NMSA 1978.

## 66-7-368. Purpose [of child restraint device provisions].

The purpose of this act [66-7-368, 66-7-369 NMSA 1978] is to minimize the likelihood of injury or death to young children riding in certain vehicles.

**History:** Laws 1983, ch. 252, § 1.

**ANNOTATIONS**

## 66-7-369. Child passenger restraint; enforcement.

A. A person shall not operate a passenger car, van or pickup truck in this state, except for an authorized emergency vehicle, public transportation or a school bus, unless all passengers less than eighteen years of age are properly restrained.

B. Each person less than eighteen years of age shall be properly secured in a child passenger restraint device or by a safety belt, unless all seating positions equipped with safety belts are occupied, as follows:

(1) children less than one year of age shall be properly secured in a rear-facing child passenger restraint device that meets federal standards, in the rear seat of a vehicle that is equipped with a rear seat. If the vehicle is not equipped with a rear seat, the child may ride in the front seat of the vehicle if the passenger-side air bag is deactivated or if the vehicle is not equipped with a deactivation switch for the passenger-side air bag;

(2) children one year of age through four years of age, regardless of weight, or children who weigh less than forty pounds, regardless of age, shall be properly secured in a child passenger restraint device that meets federal standards;

(3) children five years of age through six years of age, regardless of weight, or children who weigh less than sixty pounds, regardless of age, shall be properly secured in either a child booster seat or an appropriate child passenger restraint device that meets federal standards; and

(4) children seven years of age through twelve years of age shall be properly secured in a child passenger restraint device or by a seat belt.

C. A child is properly secured in an adult seat belt when the lap belt properly fits across the child's thighs and hips and not the abdomen. The shoulder strap shall cross the center of the child's chest and not the neck, allowing the child to sit all the way back against the vehicle seat with knees bent over the seat edge.

D. Failure to be secured by a child passenger restraint device, by a child booster seat or by a safety belt as required by this section shall not in any instance constitute fault or negligence and shall not limit or apportion damages.

**History:** Laws 1983, ch. 252, § 2; 1985, ch. 129, § 1; 1991, ch. 192, § 7; 2001, ch. 212, § 1; 2005, ch. 298, § 1.

## ANNOTATIONS

**The 2005 amendment,** effective June 17, 2005, added Subsection B(3) to provide that children five years of age through six years of age regardless of weight or children sixty pounds regardless of age shall be properly secured; changed the age of children from five to seven in Subsection B(4); added Subsection C to prescribe the proper manner of securing a child in an adult seat belt; and provided in Subsection D that failure to be secured by a child booster seat shall not constitute fault or negligence or limit or apportion damages.

**The 2001 amendment,** effective July 1, 2001, took material from Subsection A to create the present Subsection B, and redesignated former Subsection B as C; in Subsection A, substituted "except for" for "and not"and "all passengers less than eighteen" for "each passenger under eleven" and inserted "are properly restrained"; in Subsection B, inserted "Each person less than eighteen years of age shall be" in the introductory paragraph; in Paragraph (1), inserted "rear-facing" and substituted the language beginning "that meets federal standards" for "which meets the standards prescribed in 49 CFR 571.213"; in Paragraph (2), inserted "regardless of weight, or children who weigh less than forty pounds, regardless of age", and substituted "that meets federal standards" for "which meets the standards prescribed in 49 CFR 571.213 or in the rear seat by a safety belt provided in the motor vehicle"; and in Paragraph (3) substituted "in a child passenger restraint device or by a seat belt" for "by a safety belt provided in the motor vehicle in either the front or rear seat".

**The 1991 amendment,** effective June 14, 1991, deleted "Penalty" preceding "enforcement" in the section heading; deleted former Subsection B which read "Any

person who violates this section shall be issued a citation with a fine of fifty dollars ($50.00)"; and redesignated former Subsection C as Subsection B.

## 66-7-370. Short title.

This act [66-7-370 to 66-7-373 NMSA 1978] may be cited as the "Safety Belt Use Act".

**History:** Laws 1985, ch. 131, § 1.

**ANNOTATIONS**

**Law reviews.** — For article, "The Seat Belt Defense Reconsidered: A Return to Accountability in Tort Law?," see 16 N.M.L. Rev. 221 (1986).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Liability under state law for injuries resulting from defective automobile seatbelt, shoulder harness, or restraint system, 48 A.L.R.5th 1.

## 66-7-371. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1989, ch. 317, § 4 repealed 66-7-371 NMSA 1978, as enacted by Laws 1985, ch. 131, § 2, defining passenger car, effective June 16, 1989.

## 66-7-372. Safety belt use required; exception.

A. Except as provided by Section 66-7-369 NMSA 1978 and in Subsection B of this section, each occupant of a motor vehicle having a gross vehicle weight of ten thousand pounds or less manufactured with safety belts in compliance with federal motor vehicle safety standard number 208 shall have a safety belt properly fastened about his body at all times when the vehicle is in motion on any street or highway.

B. This section shall not apply to an occupant of a motor vehicle having a gross vehicle weight of ten thousand pounds or less who possesses a written statement from a licensed physician that he is unable for medical reasons to wear a safety belt or to a rural letter carrier of the United States postal service while performing the duties of a rural letter carrier.

**History:** Laws 1985, ch. 131, § 3; 1989, ch. 317, § 1; 2001, ch. 191, § 1.

**ANNOTATIONS**

**Cross references**. — For federal motor vehicle safety standard number 208, *see* 49 C.F.R. § 571.208.

**The 2001 amendment,** effective June 15, 2001, in Subsection A, deleted "front seat" preceding "occupant" and deleted "unless all seating positions equipped with safety belts are occupied" from the end of the subsection.

**The 1989 amendment,** effective June 16, 1989, substituted "motor vehicle having a gross vehicle weight of ten thousand pounds or less" for "passenger car" near the beginning of Subsections A and B, inserted "on any street or highway" near the end of Subsection A, and made a minor stylistic change in Subsection B.

**Reasonable grounds for stopping vehicle.** — Police officer who stopped defendant's vehicle because the shoulder harnesses for the driver and front seat passenger were dangling from the ceiling had reasonable grounds to stop the vehicle for violation of this section. *State v. Apodaca*, 1991-NMCA-048, 112 N.M. 302, 814 P.2d 1030, cert. denied, 112 N.M. 220, 813 P.2d 1018.

Police officers who stop vehicles for alleged violations of this section should not be required to know the design of the safety-belt system in every motor vehicle. *State v. Apodaca*, 1991-NMCA-048, 112 N.M. 302, 814 P.2d 1030, cert. denied, 112 N.M. 220, 813 P.2d 1018.

**New Mexico law does not permit custodial arrest for violation of its seat belt regulation.** *United States v. Guzman*, 864 F.2d 1512 (10th Cir. 1988).

**Law reviews.** — For note, "Tort Litigation – The New Case for the 'Seat Belt Defense' – Norwest Bank New Mexico, N.A. v. Chrysler Corporation," see 30 N.M. L. Rev. 403 (2000).

## 66-7-373. Enforcement programs.

A. Failure to be secured by a child passenger restraint device or by a safety belt as required by the Safety Belt Use Act [66-7-370 NMSA 1978] shall not in any instance constitute fault or negligence and shall not limit or apportion damages.

B. The bureau in cooperation with the state department of public education and the department of health shall, to the extent that funding allows, provide education to encourage compliance with the use of restraint devices in reducing the risk of harm to their users as well as to others.

C. The bureau shall evaluate the effectiveness of the Safety Belt Use Act and shall include a report of its findings in the annual evaluation report on its highway safety plan that it submits to the national highway traffic safety administration and the federal highway administration under 23 U.S.C. 402.

D. The provisions of the Safety Belt Use Act shall be enforced whether or not associated with the enforcement of any other statute.

**History:** Laws 1985, ch. 131, § 4; 1989, ch. 317, § 2; 1991, ch. 192, § 8; 1993, ch. 349, § 1; 2001, ch. 191, § 2.

## ANNOTATIONS

**The 2001 amendment,** effective June 15, 2001, in Subsections B and C, substituted "The bureau" for "The traffic safety bureau of the state highway and transportation department".

**The 1993 amendment,** effective July 1, 1993, added present Subsection A, redesignated former Subsections A through C as present Subsections B through D, and substituted "department of health" for "health and environment department" in Subsection B.

**The 1991 amendment,** effective June 14, 1991, deleted "penalties" at the end of the catchline; deleted former Subsection A, relating to penalties for violating Subsection A of Section 66-7-372 NMSA 1978; deleted former Subsection B which read "Failure to be secured by a child passenger restraint device or by a safety belt as required by the Safety Belt Use Act shall not in any instance constitute fault or negligence and shall not limit or apportion damages"; redesignated former Subsections C to E as Subsections A to C; inserted "of the state highway department and transportation department" in Subsections A and B; and, in Subsection C, deleted "and to educate the persons in the program regarding the requirements and penalties specified in the Safety Belt Use Act" at the end and made minor stylistic changes.

**The 1989 amendment,** effective June 16, 1989, substituted "penalties" for "penalty" in the catchline, made a minor stylistic change in Subsection A, and substituted "traffic safety bureau" for "transportation department" near the beginning of Subsections C and D.

**Constitutionality.** — Subsection B (now Subsection A) does not violate the equal protection provisions of the United States and New Mexico Constitutions. *Armijo v. Atchison, Topeka & Santa Fe Ry.*, 754 F. Supp. 1526 (D.N.M. 1990), *rev'd in part on other grounds*, 19 F.3d 547 (10th Cir. 1994).

**Affecting rights in pending cases.** — It was not error to exclude evidence of the plaintiff's failure to use seat belts because the defendant had no right or remedy with regard to seat belts prior to the adoption of this section, and applying the section did violate the prohibition against affecting rights in pending cases contained in N.M. Const., art. IV, § 34. *Mott v. Sun Country Garden Prods., Inc.*, 1995-NMCA-066, 120 N.M. 261, 901 P.2d 192, cert. denied, 120 N.M. 68, 898 P.2d 120.

**Separation of powers.** — This section does not violate the separation of powers doctrine since it is within the power of the legislature to determine whether to impose as a matter of state policy an obligation on citizens to wear a seat belt and to establish sanctions for non-conformity with that obligation. *Mott v. Sun Country Garden Prods.,*

*Inc.*, 1995-NMCA-066, 120 N.M. 261, 901 P.2d 192, cert. denied, 120 N.M. 68, 898 P.2d 120.

**Due process issues.** — Limiting the defendant's use of a seat belt defense did not violate due process. *Mott v. Sun Country Garden Prods., Inc.*, 1995-NMCA-066, 120 N.M. 261, 901 P.2d 192, cert. denied, 120 N.M. 68, 898 P.2d 120.

**Seat belt non-use.** — This section bars consideration of seat belt non-use in a comparative fault analysis of liability. *Rodriguez v. Williams*, 2015-NMCA-074, cert. denied, 2015-NMCERT-006.

Where defendant, who was driving while intoxicated, ran a red light and struck plaintiff's vehicle, the district court did not err when it concluded that Subsection A of this section barred it from considering the fact that plaintiff was not wearing a seat belt in determining plaintiff's comparative negligence. *Rodriguez v. Williams*, 2015-NMCA-074, cert. denied, 2015-NMCERT-006.

**Use of seat belt defense to prove causation prohibited.** — The consideration of evidence that the plaintiff was not wearing a seat belt in order to prove causation is prohibited by this section. *Mott v. Sun Country Garden Prods., Inc.*, 1995-NMCA-066, 120 N.M. 261, 901 P.2d 192, cert. denied, 120 N.M. 68, 898 P.2d 120.

**Use of seat belt defense to reduce damages prohibited.** — The nonuse of available seat belts by rear seat passengers cannot be used to reduce their recovery of damages. *Norwest Bank N.M. v. Chrysler Corp.*, 1999-NMCA-070, 127 N.M. 397, 981 P.2d 1215, cert. denied, 127 N.M. 389, 981 P.2d 1207.

**Seat belt evidence in mitigation of punitive damages.** — In an action against an automobile manufacturer arising from an accident in which several occupants were ejected from a minivan, evidence of defendant's general corporate policy of encouraging seat belt use was allowable to mitigate a claim for punitive damages. *Norwest Bank N.M. v. Chrysler Corp.*, 1999-NMCA-070, 127 N.M. 397, 981 P.2d 1215, cert. denied, 127 N.M. 389, 981 P.2d 1207.

**Law reviews.** — For annual survey of New Mexico law of torts, see 16 N.M.L. Rev. 85 (1986).

For note, "The New Case for the 'Seat Belt Defense' - *Norwest Bank New Mexico, NA v. Chrysler Corporation,*" see 30 N.M.L. Rev. 403 (2000).

## 66-7-374. Texting while driving.

A. A person shall not read or view a text message or manually type on a handheld mobile communication device for any purpose while driving a motor vehicle, except to summon medical or other emergency help or unless that device is an amateur radio and

the driver holds a valid amateur radio operator license issued by the federal communications commission.

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

C. As used in this section:

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

(2) "handheld mobile communication device" means a wireless communication device that is designed to receive and transmit text or image messages, but "handheld mobile communication device" excludes global positioning or navigation systems, devices that are physically or electronically integrated into a motor vehicle and voice-operated or hands-free devices that allow the user to compose, send or read a text message without the use of a hand except to activate, deactivate or initiate a feature or function; and

(3) "text message" means a digital communication transmitted or intended to be transmitted between communication devices and includes electronic mail, an instant message, a text or image communication and a command or request to an internet site; but "text message" excludes communications through the use of a computer-aided dispatch service by law enforcement or rescue personnel.

**History:** Laws 2014, ch. 5, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2014, ch. 5, § 3 made Laws 2014, ch. 5, § 1 effective July 1, 2014.

## 66-7-375. Use of a handheld mobile communication device while driving a commercial motor vehicle.

A. A person shall not use a handheld mobile communication device for any purpose while driving a commercial motor vehicle except to summon medical or other emergency help or unless that device is an amateur radio and the driver holds a valid amateur radio operator license issued by the federal communications commission. This

prohibition is a separate prohibition from the prohibition on texting while driving pursuant to Section 66-7-374 NMSA 1978.

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

C. As used in this section:

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

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

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

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

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

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

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

(4) "text message" means a digital communication transmitted or intended to be transmitted between communication devices and includes electronic mail, an instant message, a text or image communication and a command or request to an internet site;

but "text message" excludes communications through the use of a computer-aided dispatch service by law enforcement or rescue personnel.

**History:** Laws 2016, ch. 63, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2016, ch. 63 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 18, 2016, 90 days after the adjournment of the legislature.

## 66-7-376. Multiple lane roadways; required lane travel for truck tractors; two-way left-turn lanes.

A. Whenever any roadway has been divided into two or more clearly marked lanes for traffic, the following requirements, in addition to all consistent requirements within the Motor Vehicle Code, shall apply:

(1) a truck tractor shall be driven as nearly as practicable entirely within a single lane;

(2) a truck tractor shall not be moved from the lane until the driver has first ascertained that the movement can be made with safety and then given a signal, not less than the last one hundred feet traveled by the truck tractor, of the driver's intention to change lanes;

(3) upon a roadway that is divided into three lanes, a truck tractor shall not be driven in the center lane except:

(a) when overtaking and passing another vehicle where the roadway is clearly visible and the center lane is clear of traffic within a safe distance;

(b) in preparation for a left turn; or

(c) where the center lane is at the time allocated exclusively to traffic moving in the direction the truck tractor is proceeding and is signposted to give notice of the allocation;

(4) a truck tractor shall not be driven in the left lane of a roadway except when overtaking and passing another vehicle; provided, however, that this paragraph shall not prohibit driving in the left lane when traffic conditions, flow or road configuration, such as the potential of merging traffic, require the use of the left lane to maintain safe traffic conditions; and provided further that this paragraph shall not prohibit driving in the left lane of a roadway within the city limits of a municipality or upon a county road as long as such roadway is not part of the national system of interstate and defense highways; and

(5) official signs may be erected directing slow-moving traffic to use a designated lane or designating those lanes to be used by traffic moving in a particular direction regardless of the center of the roadway, and drivers of vehicles shall obey the directions of every such sign.

B. A two-way left-turn lane is a lane near the center of the highway set aside for use by vehicles making left turns in both directions from or into the roadway. Two-way left-turn lanes shall be designated by distinctive roadway markings consisting of parallel double yellow lines, interior line dashed and exterior line solid, on each side of the lane. A vehicle shall not be driven in a designated two-way left-turn lane except when preparing for or making a left turn from or into a roadway. Vehicles turning left from the roadway shall not be driven in the two-way left-turn lane for more than two hundred feet while preparing for and making the turn. A vehicle turning left onto the roadway may utilize the two-way left-turn lane as a staging area by stopping and waiting for traffic proceeding in the same direction to clear before merging into the adjacent lanes of travel. A left turn shall not be made from any other lane where a two-way left-turn lane has been designated; provided, however, that this section shall not prohibit driving across a two-way left-turn lane when moving from a service drive onto such marked roadway.

**History:** 1978 Comp., § 66-7-376, enacted by Laws 2023, ch. 96, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2023, ch. 96, § 3 made Laws 2023, ch. 96, § 1 effective July 1, 2023.

# PART 5
# WEIGHT AND SIZE LIMITATIONS

## 66-7-401. Scope and effect.

A. It is a misdemeanor for any person to drive or move or for the owner, lessee or other person directing the operation to cause or permit to be driven or moved on any highway any vehicle of a size or weight exceeding the limitations stated in Sections 66-7-401 through 66-7-416 NMSA 1978 or otherwise in violation of those sections, and the maximum size and weight of vehicles herein specified shall be lawful throughout this state, and local authorities shall have no power or authority to alter the limitations except as express authority may be granted in Sections 66-7-401 through 66-7-416 NMSA 1978.

B. The provisions of Sections 66-7-401 through 66-7-416 NMSA 1978 governing size, weight and load shall not apply to fire apparatus, road machinery engaged in highway construction or maintenance or to implements of husbandry, including farm

tractors, temporarily moved upon a highway or to a vehicle operated under the terms of a special permit issued as herein provided.

C. Upon the declaration of a national emergency pursuant to federal law or a declaration by the governor of an emergency pursuant to the Emergency Powers Code [Chapter 12, Articles 10, 10A, 11 and 12 NMSA 1978], the secretary of transportation may issue an order suspending or modifying the requirements for vehicular size, weight and load pursuant to Sections 66-7-401 through 66-7-416 NMSA 1978 for the duration of the emergency; provided that the order shall be published on the department of transportation's website.

**History:** 1953 Comp., § 64-7-401, enacted by Laws 1978, ch. 35, § 472; 1978 Comp., § 66-7-401; 2023, ch. 71, § 1.

## ANNOTATIONS

**Cross references.** — For general definitions applicable to this section, *see* 66-1-4 to 66-1-4.20 NMSA 1978.

For provisions that references to English measurement units also refer to equivalent metric units, *see* 66-1-5 NMSA 1978.

For the penalty for a misdemeanor, *see* 66-8-7 NMSA 1978.

**The 2023 amendment,** effective July 1, 2023, authorized the secretary of transportation to issue orders suspending or modifying the requirements for vehicular size, weight and load for the duration of a national emergency or an emergency declared by the governor, and required these orders to be published on the department of transportation website; in the section heading, deleted "of article"; and added Subsection C.

**Provisions within police powers of legislature.** — The supreme court held that the legislature by enacting Laws, 1955, ch. 37 (similar to Sections 66-7-401 to 66-7-416 NMSA 1978), had spoken upon a subject within the police powers excepted from referendum by the state constitution (N.M. Const., art. IV, § 1); it had exercised its discretion to speak one way or the other; and there was apparent a valid and reasonable relationship between the enactment and the preservation of the public peace, health or safety. *Otto v. Buck*, 1956-NMSC-040, 61 N.M. 123, 295 P.2d 1028.

**Enactment of provisions not referable.** — Laws 1955, ch. 37 (similar to Sections 66-7-401 to 66-7-416 NMSA 1978), can only be justified under the police power of the state. The test is not whether the particular act, in the opinion of the supreme court or any other fact-finding agency, is for the peace, health or safety. It is a question to be determined by the legislature and any law which is passed under the inherent police power of the state is not referable under N.M. Const., art. IV, § 1. The only way a state gains authority to regulate any highway activity is under its police power. 1955 Op. Att'y Gen. No. 55-6268.

**No violation until loaded vehicle "driven or moved".** — The remedy of the state is restricted to arrest when the offense occurs. It is doubtful that prior to the occurrence of the offense a person could be required to take measures which would prevent the offense. The offense is not committed until a vehicle thus loaded is "driven or moved" or operated on a highway. Certainly the driver or owner of the vehicle commits no offense if his vehicle, although loaded as prohibited, is parked on the side of a highway. However, once moving on the highway if sand, gravel or manure escapes, then arrest and punishment may follow. 1955 Op. Att'y Gen. No. 55-6262.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 171, 198 to 201.

Power to limit weight of vehicle or its load with respect to use of streets or highways, 75 A.L.R.2d 376.

Violation or regulations governing size or weight of motor vehicles, or combinations of vehicles and loads, on the highway as basis of liability for personal injury, death, or damage to private property, 21 A.L.R.3d 989.

Liability for damaging highway or bridge by nature or weight of vehicles or loads transported over it, 53 A.L.R.3d 1035, 31 A.L.R.5th 171.

40 C.J.S. Highways §§ 243, 244; 60 C.J.S. Motor Vehicles §§ 32, 43.

## 66-7-402. Width of vehicles.

The total outside width of any vehicle or its load, excepting mirrors, shall not exceed eight feet six inches. Safety devices up to three inches on either side of the vehicle and recreational vehicle appurtenances, including retracting awnings, up to six inches on either side of the vehicle are also excepted.

**History:** 1953 Comp., § 64-7-402, enacted by Laws 1978, ch. 35, § 473; 1981, ch. 53, § 1; 1983, ch. 30, § 1; 1991, ch. 160, § 18; 2001, ch. 127, § 4.

**ANNOTATIONS**

**Cross references.** — For excessive width of vehicles being an unlawful use of the highways, *see* 66-7-401 NMSA 1978.

For permits for excessive size, *see* 66-7-413 NMSA 1978.

**The 2001 amendment,** effective June 15, 2001, inserted "and recreational vehicle appurtenances, including retracting awnings, up to six inches on either side of the vehicle".

**The 1991 amendment,** effective July 1, 1991, deleted former Subsection B which read "Any bus operated as part of a municipal transit system and operated solely in the county in which the municipality is situate may have a width not to exceed eight feet ten inches" and made a related stylistic change.

**Section 64-23-13, 1953 Comp. (similar to this section)** did not relate to a towed load. 1972 Op. Att'y Gen. No. 72-21.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 198, 791, 792.

Violation of regulations governing size or weight of motor vehicles, or combinations of vehicles and loads, on the highway as basis of liability for personal injury, death, or damage to private property, 21 A.L.R.3d 989.

60 C.J.S. Motor Vehicles §§ 32, 43.

## 66-7-403. Projecting loads on passenger vehicles.

No passenger-type vehicle, except a motorcycle or recreational vehicle shall be operated on any highway with any load carried thereon extending beyond the line of the fenders on the left side of the vehicle nor extending more than six inches beyond the line of the fenders on the right side of the vehicle.

**History:** 1953 Comp., § 64-23-14, enacted by Laws 1955, ch. 37, § 3; 1971, ch. 279, § 8; recompiled as 1953 Comp., § 64-7-403, by Laws 1978, ch. 37, § 474; 2001, ch. 127, § 5.

**ANNOTATIONS**

**Cross references.** — For the definition of "motorcycle", *see* 66-1-4.11 NMSA 1978.

**The 2001 amendment,** effective June 15, 2001, inserted "or recreational vehicle" following "except a motorcycle".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 793.

Liability for injury or damage caused by collision with portion of load projecting beyond rear or side of motor vehicle or trailer, 21 A.L.R.3d 371.

## 66-7-404. Height and length of vehicles and loads.

A. A vehicle shall not exceed a height of fourteen feet.

B. A vehicle shall not exceed a length of forty feet extreme overall dimension and no motor home shall exceed a length of forty-five feet extreme overall dimension, exclusive of front and rear bumpers, except when operated in combination with another vehicle as provided in this section. A bus may exceed a length of forty-five feet when operating on national network highways. A combination of vehicles, unless otherwise exempted in this section, shall not exceed an overall length of sixty-five feet, exclusive of front and rear bumpers.

C. A combination of vehicles coupled together shall not consist of more than two units, except:

(1) a truck tractor and semitrailer shall be permitted to pull one trailer;

(2) a vehicle shall be permitted to pull two units, provided that the middle unit is equipped with brakes and has a weight equal to or greater than the last unit and the total combined gross weight of the towed units does not exceed the manufacturer's stated gross weight of the towing units;

(3) a double or triple saddle-mount or fifth wheel mount of vehicles in transit by driveaway-towaway methods shall be permitted;

(4) vehicles and trailers operated by or under contract for municipal refuse systems;

(5) farm trailers, implements of husbandry and fertilizer trailers operated by or under contract to a farmer or rancher in farming or ranching operations; and

(6) as provided in Subsections D through G of this section.

D. Exclusive of safety and energy conservation devices, refrigeration units and other devices such as coupling devices, vehicles operating a truck tractor semitrailer or truck tractor semitrailer-trailer combinations on the interstate highway system and those qualifying federal aid primary system highways designated by the secretary of the United States department of transportation, pursuant to the federal Surface Transportation Assistance Act of 1982, Public Law 97-424, Section 411, and on those highways designated by the department of transportation by rule may exceed an overall length limitation of sixty-five feet, provided that the length of the semitrailer in a truck tractor semitrailer combination does not exceed fifty-seven feet six inches and the length of the semitrailer or trailer in a truck tractor semitrailer-trailer combination does not exceed twenty-eight feet six inches. The department of transportation shall adopt rules and regulations granting reasonable access to terminals, facilities for food, fuel, repairs and rest and points of loading and unloading for household goods carriers to vehicles operating in combination pursuant to this subsection. As used in this subsection, "truck tractor" means a non-cargo carrying power unit designed to operate in combination with a semitrailer or trailer, except that a truck tractor and semitrailer

engaged in the transportation of automobiles may transport motor vehicles on part of the truck tractor.

E. The following combination vehicles are specialized equipment and may exceed an overall length of sixty-five feet pursuant to the Code of Federal Regulations, Title 23, Section 658.13:

(1) automobile transporters;

(2) boat transporters;

(3) beverage semitrailers; and

(4) munitions carriers using dromedary equipment.

F. A saddle-mount vehicle is specialized equipment and may not exceed an overall length of ninety-seven feet pursuant to the Code of Federal Regulations, Title 23, Section 658.13.

G. Notwithstanding any other subsection of this section, a trailer or semitrailer combination of such dimensions as those that were in actual and lawful use in this state on December 1, 1982 may be lawfully operated on the highways of this state.

**History:** 1953 Comp., § 64-7-404, enacted by Laws 1978, ch. 35, § 475; 1979, ch. 323, § 1; 1983, ch. 256, § 1; 1984 (1st S.S.), ch. 9, § 2; 1989, ch. 52, § 1; 1989, ch. 318, § 33; 1991, ch. 160, § 19; 1993, ch. 328, § 4; 2001, ch. 127, § 6 2007, ch. 209, § 8; 2021, ch. 59, § 10.

## ANNOTATIONS

**Cross references.** — For general definitions applicable to this section, *see* 66-1-4 to 66-1-4.20 NMSA 1978.

For Section 411 of Public Law 97-424, referred to in the first sentence in Subsection D, *see* 49 U.S.C. § 31111 et seq.

**The 2021 amendment,** effective June 18, 2021, made conforming changes due to the transfer of certain authority from the department of public safety to the department of transportation; and in Subsection D, after "designated by the department", added "of transportation", after "by rule", deleted "or regulation with the concurrence of the New Mexico department of transportation", and after "The department of", deleted "public safety" and added "transportation".

**The 2007 amendment,** effective July 1, 2007, provided that a bus may exceed a length of forty-five feet when operating on national networks highways and added Subsections E and F.

**The 2001 amendment,** effective June 15, 2001, inserted "and no motor home shall exceed a length of forty-five feet extreme overall dimension" in Subsection B.

**The 1993 amendment,** effective July 1, 1993, in Subsection D, substituted "fifty-seven feet six inches" for "forty-eight feet" near the end of the first sentence and "twenty-eight feet six inches" for "twenty-eight and one-half feet" at the end of the first sentence.

**The 1991 amendment,** effective July 1, 1991, in Subsection B, deleted "Subsection C of" preceding "this section" at the end of the first sentence and added the second sentence; in Subsection C, designated formerly undesignated provisions as Paragraphs (1) to (3), deleted "No combination of vehicles, unless otherwise exempted in this section, shall exceed an overall length of sixty-five feet, exclusive of the front and rear bumpers" following Paragraph (3), added Paragraphs (4) to (6) and made a related stylistic change; deleted former Subsection D, relating to the exemption from application of former Subsection C of vehicles and trailers used by municipal refuse systems and farmers or ranchers; redesignated former Subsections E and F as Subsections D and E; and deleted "Notwithstanding the provisions of Subsection C of this section and" at the beginning of Subsection D.

**The 1989 amendment,** effective July 1, 1989, substituted the present provisions of Subsection A for "No vehicle including any load thereon shall exceed a height of thirteen feet six inches"; in Subsection B deleted "including any load thereon" preceding "shall"; and in Subsection E, substituted "state highway and transportation department" for "state highway department" near the middle of the first sentence, and "department" for "motor transportation department" near the middle of the first sentence and near the beginning of the second sentence

Laws 1989, ch. 52, § 1, effective June 16, 1989, also amended 66-7-404 NMSA 1978. The section was set out as amended by Laws 1989, ch. 318, § 33. *See* 12-1-8 NMSA 1978.

**No oversize permit required for articulated bus under 65 feet long.** — An articulated bus is a hybrid vehicle with the towing unit falling within the definition of motor vehicle and bus and the towed unit falling within the definition of semi-trailer. The combination of units being less than 65 feet in length, no oversize permit is required for operation of this vehicle. 1961 Op. Att'y Gen. No. 61-39.

**Commission cannot legally issue permits for the movement** of trucks in driveaway-towaway saddle mount combinations of more than one towed vehicle. 1959 Op. Att'y Gen. No. 59-38.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 198, 791.

Violation of regulations governing size or weight of motor vehicles, or combinations of vehicles and loads, on the highway as basis of liability for personal injury, death, or damage to private property, 21 A.L.R.3d 989.

Federal regulation of tractor-trailer configuration under the Surface Transportation Act of 1982 (49 USCS Appx §§ 2301 et seq.), 77 A.L.R. Fed. 350.

60 C.J.S. Motor Vehicles §§ 32, 43.

## 66-7-405. Minimum vehicle size.

A. It is unlawful to operate on the highways of this state any motor vehicle:

(1) with a wheelbase, between two axles, of less than three feet four inches;

(2) with a motor displacement of less than forty-five cubic centimeters; or

(3) any motorcycle with less than a twenty-five inch seat height measured from the ground to the lowest point on the top of the seat cushion, without a rider.

B. For the purpose of this section, wheelbase shall be measured upon a straight line from center to center of the vehicle axles.

**History:** 1953 Comp., § 64-23-15.1, enacted by Laws 1973, ch. 20, § 1; recompiled as 1953 Comp., § 64-7-405, by Laws 1978, ch. 35, § 476.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1973, ch. 20, § 1, repealed 64-23-15.1, 1953 Comp., relating to minimum motor vehicle wheelbase, and enacted the above section.

**Cross references.** — For the definition of "motorcycle", *see* 66-1-4.11 NMSA 1978.

## 66-7-406. Special load limits.

A. Subject to the provisions of Sections 66-7-401 through 66-7-416 NMSA 1978 limiting the length of vehicles and loads, the load upon any vehicle operated alone or the load upon the front vehicle of a combination of vehicles shall not extend more than three feet beyond the foremost part of the vehicle, and the load upon any vehicle operated alone or the load upon the rear vehicle of a combination of vehicles shall not extend more than seven feet beyond the rear of the bed or body of the vehicle. For the purposes of this section, the foremost part of a front-end loading solid waste collection vehicle shall include the front-end loading equipment attached to the vehicle.

B. If a vehicle combination consists of a tractor, semitrailer and a trailer, the rear overhang is limited to a maximum of two feet on the trailer and semitrailer and no front overhang.

**History:** 1953 Comp., § 64-7-406, enacted by Laws 1978, ch. 35, § 477; 1989, ch. 319, § 9; 1997, ch. 94, § 1.

**ANNOTATIONS**

**Cross references.** — For the definition of "combination", *see* 66-1-4.3 NMSA 1978.

**The 1997 amendment,** effective June 20, 1997, added the second sentence in Subsection A.

**The 1989 amendment,** effective July 1, 1989, designated the former provisions as Subsection A, therein substituting "Sections 66-7-401 through 66-7-416 NMSA 1978" for "Sections 64-7-401 through 64-7-416 NMSA 1953"; added Subsection B; and made minor stylistic changes.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 171, 196, 793.

Liability for injury or damage caused by collision with portion of load projecting beyond rear or side of motor vehicle or trailer, 21 A.L.R.3d 371.

## 66-7-407. Loads on vehicles.

A. No vehicle shall be driven or moved on any highway unless the vehicle is so constructed, loaded, secured or covered as to prevent any of its load from dropping, sifting, leaking or otherwise escaping, except that sand may be dropped for the purpose of securing traction or water or other substance may be sprinkled on a roadway in cleaning or maintaining the roadway.

B. No person shall operate on any highway any vehicle or combination of vehicles with any load unless the load and any covering thereon are securely fastened so as to prevent the covering or load from becoming loose, detached or in any manner a hazard to other users of the highway.

**History:** 1953 Comp., § 64-7-407, enacted by Laws 1978, ch. 35, § 478; 1989, ch. 319, § 10.

**ANNOTATIONS**

**Cross references.** — For the penalty assessment for violation, *see* 66-8-116 NMSA 1978.

**The 1989 amendment,** effective July 1, 1989, inserted "secured or covered" in Subsection A and made minor stylistic changes throughout the section.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 171, 196.

## 66-7-408. Trailers and towed vehicles.

A. When one vehicle is towing another the drawbar or other connection shall be of sufficient strength to pull all weight towed thereby. When a combination of vehicles are engaged in transporting poles, pipe, machinery or other objects of structural nature which cannot readily be dismembered, the load shall be distributed so as to equalize the weights on the axle of each vehicle insofar as possible.

B. When one vehicle is towing another and the connection consists of a chain, rope or cable, there shall be displayed upon such connection a white flag or cloth not less than twelve inches square.

**History:** 1953 Comp., § 64-7-408, enacted by Laws 1978, ch. 35, § 479.

**ANNOTATIONS**

**Cross references.** — For general definitions applicable to this section, *see* 66-1-4 to 66-1-4.20 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 794 to 796.

Liability for injury incident to towing automobile, 30 A.L.R. 750, 30 A.L.R.2d 1019.

Liability for collision due to swaying or swinging of motor vehicle or trailer, 1 A.L.R.2d 167.

60 C.J.S. Motor Vehicles § 31; 60A C.J.S. Motor Vehicles §§ 339, 341.

## 66-7-409. Load limits on single axles, wheels and tires.

A. Except as provided by Subsection D of this section, the gross weight imposed on the highway by the wheels of any one axle of a vehicle shall not exceed twenty-one thousand six hundred pounds nor shall any one wheel carry a load in excess of eleven thousand pounds.

B. For the purposes of Sections 66-7-401 through 66-7-416 NMSA 1978, a single-axle load is defined as the total load transmitted to the road by all wheels whose centers are included between two parallel transverse vertical planes forty inches or less apart extending across the full width of the vehicle. A tandem axle load is defined as the total

load transmitted to the road by all wheels whose centers are included between two parallel transverse vertical planes more than forty inches apart but less than one hundred twenty inches apart, extending across the full width of the vehicle. The allowed load on tandem axles shall not exceed the gross weight given in Section 66-7-410 NMSA 1978 for the respective distance between the axles.

C. No wheel equipped with pneumatic, solid rubber or cushion tires shall carry a load in excess of six hundred pounds for each inch of tire width. The width of pneumatic tires shall be taken at the manufacturer's rating. The width of solid rubber and cushion tires shall be measured at the flange of the rim.

D. The division shall by rule establish standard weight limits for the wheels of any one vehicle axle and any one wheel that allow for the gross weight limitation increases authorized for natural gas vehicles.

**History:** 1953 Comp., § 64-7-409, enacted by Laws 1978, ch. 35, § 480; 1993, ch. 328, § 5; 2016, ch. 70, § 2.

## ANNOTATIONS

**Cross references.** — For definitions of "pneumatic tire" and "solid tire", *see* 66-1-4.14 NMSA 1978 and 66-1-4.16 NMSA 1978, respectively.

**The 2016 amendment,** effective May 18, 2016, required the motor transportation division to establish rules to provide for exemptions for natural gas vehicles from the statutory limitations on the amount of gross weight allowable for wheels, axles and loads; in Subsection A, added "Except as provided by Subsection D of this section"; and added a new Subsection D.

**The 1993 amendment,** effective July 1, 1993, deleted "nor shall a tandem axle, as hereinafter defined, carry a load in excess of thirty-four thousand three hundred twenty pounds" from the end of Subsection A; and, in Subsection B, divided the former first sentence into the present first and second sentences by deleting "and" and making a punctuation change, substituted "66-7-401 through 66-7-416 NMSA 1978" for "64-7-401 through 64-7-416 NMSA 1953" in the first sentence, made stylistic changes in the first and second sentences, and added the last sentence.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 171, 196, 791.

Power to limit weight of vehicle or its load with respect to use of streets or highways, 75 A.L.R.2d 376.

Violation of regulation governing size or weight of motor vehicle, or combinations of vehicles and loads, on the highway as basis of liability for personal injury, death, or damage to private property, 21 A.L.R.3d 989.

Liability for damaging highway or bridge by nature or weight of vehicles or loads transported over it, 53 A.L.R.3d 1035, 31 A.L.R.5th 171.

60 C.J.S. Motor Vehicles §§ 32, 43; 61A C.J.S. Motor Vehicles § 685.

## 66-7-410. Gross weight of vehicles and loads.

A. Subject to the limit upon the weight imposed upon the highway through any one axle as set forth in Section 66-7-409 NMSA 1978 and except as provided in Subsection D of this section, the total gross weight with load imposed upon the highway by any one group of two or more consecutive axles of a vehicle or combination of vehicles shall not exceed the gross weight given for the respective distance between the first and last axle of the group of axles measured longitudinally to the nearest foot as set forth in the following table:

| Distance in feet between first and last axles of group | Allowed load in pounds on group of axles |
|---|---|
| 4 | 34,320 |
| 5 | 35,100 |
| 6 | 35,880 |
| 7 | 36,660 |
| 8 | 37,440 |
| 9 | 38,220 |
| 10 | 39,000 |
| 11 | 39,780 |
| 12 | 40,560 |
| 13 | 41,340 |
| 14 | 42,120 |
| 15 | 42,900 |
| 16 | 43,680 |
| 17 | 44,460 |
| 18 | 45,240. |

B. Except as provided in Subsection D of this section, the total gross weight with load imposed on the highway by any vehicle or combination of vehicles where the distance between the first and last axles is more than eighteen feet shall not exceed that given for the respective distances in the following table:

| Distance in feet between first and last axles of group | Allowed load in pounds on group of axles |
|---|---|
| 19 | 53,100 |
| 20 | 54,000 |

| | |
|---|---|
| 21 | 54,900 |
| 22 | 55,800 |
| 23 | 56,700 |
| 24 | 57,600 |
| 25 | 58,500 |
| 26 | 59,400 |
| 27 | 60,300 |
| 28 | 61,200 |
| 29 | 62,100 |
| 30 | 63,000 |
| 31 | 63,900 |
| 32 | 64,800 |
| 33 | 65,700 |
| 34 | 66,600 |
| 35 | 67,500 |
| 36 | 68,400 |
| 37 | 69,300 |
| 38 | 70,200 |
| 39 | 71,100 |
| 40 | 72,000 |
| 41 | 72,900 |
| 42 | 73,800 |
| 43 | 74,700 |
| 44 | 75,600 |
| 45 | 76,500 |
| 46 | 77,400 |
| 47 | 78,300 |
| 48 | 79,200 |
| 49 | 80,100 |
| 50 | 81,000 |
| 51 | 81,900 |
| 52 | 82,800 |
| 53 | 83,700 |
| 54 | 84,600 |
| 55 | 85,500 |
| 56 or over | 86,400. |

C. The distance between the centers of the axles shall be measured to the nearest even foot. When a fraction is exactly one-half, the next larger whole number shall be used.

D. The total gross weight with load limitations imposed by this section for any vehicle or combination of vehicles shall be increased by:

(1) four hundred pounds if the vehicle or combination of vehicles uses idle reduction technology; or

(2) if the vehicle is a natural gas vehicle, a standard gross weight limit increase for each axle distance category in this section, established by the division by rule, by an amount equal to the difference between the average weight of the vehicle attributable to its natural gas tank and fuel system and the average weight of a comparable diesel tank and fuel system.

**History:** 1953 Comp., § 64-7-410, enacted by Laws 1978, ch. 35, § 481; 2007, ch. 209, § 9; 2016, ch. 70, § 3.

**ANNOTATIONS**

**Cross references.** — For definitions of "combination" and"gross vehicle weight", *see* 66-1-4.3 NMSA 1978 and 66-1-4.7 NMSA 1978, respectively.

For damages for injuries to highway due to excessive weight, *see* 67-7-10 NMSA 1978.

**The 2016 amendment,** effective May 18, 2016, increased the allowable weight limit for vehicles powered by natural gas; in Subsection D, after "shall be increased by", added the paragraph designation "(1)", after "technology", added "or", and added a new Paragraph (2).

**The 2007 amendment,** effective July 1, 2007, added Subsection D to increase load limitations by vehicles using idle reduction technology.

**Single axle and gross weight provisions construed harmoniously.** — The limitations provided in Section 64-23-20, 1953 Comp. (similar to this section), are subject to Section 64-23-19, 1953 Comp. (similar to Section 66-7-409 NMSA 1978), and these two sections can and should be construed harmoniously. 1965 Op. Att'y Gen. No. 65-43.

## 66-7-411. Authorized representative may weigh vehicles and require removal of excess loads; graduated penalties.

A. A police officer with the New Mexico state police division of the department of public safety, having reason to believe that the weight of a vehicle and load is unlawful, may require the driver to stop and submit to weighing of the vehicle and load by means

of either portable or stationary scales and may require the vehicle to be driven to the nearest scales approved by the department of public safety or the department of transportation if the scales are within five miles. A police officer shall not require a driver to weigh a vehicle on a private scale.

B. When a police officer with the New Mexico state police division of the department of public safety or a transportation inspector, upon weighing a vehicle or combination, determines that the gross vehicle weight or combination gross vehicle weight exceeds the maximum authorized by Sections 66-7-409 and 66-7-410 NMSA 1978, the officer or inspector shall require the driver or owner of the vehicle or combination to unload that portion of the load necessary to decrease the gross vehicle weight or combination gross vehicle weight to the authorized maximum.

C. A driver of a vehicle who fails or refuses to stop and submit the vehicle and load to weighing or who fails or refuses, when directed by a duly authorized police officer with the New Mexico state police division of the department of public safety or a transportation inspector, upon a weighing of the vehicle, to unload the vehicle and otherwise comply with the provisions of this section is guilty of a misdemeanor.

D. A shipper or a person loading the vehicle who intentionally overloads a vehicle that the shipper or person has reason to believe will travel in that condition upon a public highway is guilty of a misdemeanor and shall be fined in accordance with Section 66-8-116.1 NMSA 1978.

E. In all cases of violations of weight limitations, the penalties shall be assessed and imposed in accordance with Section 66-8-116.1 NMSA 1978.

**History:** 1953 Comp., § 64-7-411, enacted by Laws 1978, ch. 35, § 482; 1980, ch. 56, § 1; 1991, ch. 160, § 20; 2003, ch. 141, § 2; 2007, ch. 209, § 10; 2015, ch. 3, § 36; 2021, ch. 59, § 11.

## ANNOTATIONS

**The 2021 amendment,** effective June 18, 2021, made conforming changes due to the transfer of certain authority to the department of transportation; and in Subsection A, after "department of public safety", added "or the department of transportation".

**The 2015 amendment,** effective July 1, 2015, provided the New Mexico state police division of the department of public safety with the authority to investigate and weigh vehicles suspected of exceeding weight limitations, and struck the schedule of penalties for vehicle weight violations in this section, and specified that penalties for weight violations would be imposed pursuant to Section 66-8-116.1 NMSA 1978; in Subsection A, after "A police officer with the", deleted "motor transportation division or the", and added the last sentence relating to private scales; in Subsection B, after "When a police officer with the", deleted "motor transportation division or the"; in Subsection C, after "authorized police officer with the", deleted "motor transportation division or the"; in

Subsection D, after "in accordance with", deleted "Subsection E of this section" and added "Section 66-8-116.1 NMSA 1978"; in Subsection E, after "in accordance with", deleted "the following schedule" and added "Section 66-8-116.1 NMSA 1978", and deleted the remainder of the subsection relating to excess weight and penalty assessments.

**The 2007 amendment,** effective July 1, 2007, increased the fines in Subsection E for excess weight.

**The 2003 amendment,** effective June 20, 2003, in Subsection A, substituted "police officer with the motor transportation division or New Mexico state police division of the department of public safety" for "New Mexico state police officer or enforcement employee of", and inserted "of public safety" following "department"; substituted "a police officer with the motor transportation division or New Mexico state police division of the department of the public safety or a transportation inspector" for "the officer or employee" in Subsections B and C; and substituted "inspector" for "employee" in Subsection B.

**The 1991 amendment,** effective July 1, 1991, in Subsection A, inserted "New Mexico" near the beginning, substituted "department" for "division" near the end and made a minor stylistic change; substituted "the officer or employee shall" for "he shall" in Subsection B; substituted "unload the vehicle" for "stop the vehicle" near the end of Subsection C; rewrote Subsection D which read "Any shipper who intentionally overloads a vehicle which he has reason to believe will travel in such condition upon a public thoroughfare shall also be fined in accordance with Subsection E"; and substituted "1 to 3,000" for "1,000 to 3,000" in the first line in the schedule in Subsection E.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 203.

60 C.J.S. Motor Vehicles § 32.

## 66-7-412. Special farm permits.

The department of transportation shall have the authority to issue special permits at all ports of entry where registration stations or places where inspection and registration services are maintained by the department of transportation to all implements of husbandry using the highways, including farm tractors, and to the instrumentalities or vehicles that may be carrying the implements of husbandry, including farm tractors, when the securing of these permits is required by law.

**History:** 1953 Comp., § 64-23-21.1, enacted by Laws 1959, ch. 247, § 1; 1967, ch. 97, § 25; 1977, ch. 250, § 68; recompiled as 1953 Comp., § 64-7-412, by Laws 1978, ch. 35, § 483; 2003, ch. 141, § 3; 2015, ch. 3, § 37; 2021, ch. 59, § 12.

## ANNOTATIONS

**Cross references.** — For definitions of "farm tractor" and "implement of husbandry", *see* 66-1-4.6 NMSA 1978 and 66-1-4.9 NMSA 1978, respectively.

**The 2021 amendment,** effective June 18, 2021, made conforming changes due to the transfer of certain authority from the department of public safety to the department of transportation; and after "The", deleted "New Mexico state police division of the department of public safety" and added "department of transportation", and after "maintained by the", deleted "New Mexico state police division" and added "department of transportation".

**The 2015 amendment,** effective July 1, 2015, provided the New Mexico state police division of the department of public safety with the authority to issue special farm permits; after "The", deleted "motor transportation" and added "New Mexico state police", and after "maintained by the", deleted "motor transportation" and added "New Mexico state police".

**The 2003 amendment,** effective June 30, 2003, inserted "of the department of public safety" following "division", inserted "motor transportation" following "maintained by the"; and substituted "implements" for "instrumentalities".

## 66-7-413. Permits for excessive size and weight; special notification required on movement of manufactured homes.

A. The department of transportation and local highway authorities may, in their discretion, upon application in writing and good cause being shown, issue a special permit in writing authorizing the applicant to operate or move a vehicle or load of a size or weight exceeding the maximum specified in Sections 66-7-401 through 66-7-416 NMSA 1978 on a highway under the jurisdiction of the state transportation commission or local authorities. Except for the movement of manufactured homes, a permit may be granted, in cases of emergency, for the transportation of loads on a certain unit or combination of equipment for a specified period of time not to exceed one year, and the permit shall contain the route to be traversed, the type of load to be transported and any other restrictions or conditions deemed necessary by the body granting the permit. In every other case, the permit shall be issued for a single trip and may designate the route to be traversed and contain any other restrictions or conditions deemed necessary by the body granting the permit. Every permit shall be carried in the vehicle to which it refers and shall be opened for inspection to any peace officer. It is a misdemeanor for a person to violate a condition or term of the special permit.

B. The department of transportation shall promulgate rules in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] pertaining to safety practices, liability insurance and equipment for escort vehicles provided by the motor carrier and for escort vehicles provided by a private business in this state.

(1) The department of public safety or the department of transportation shall provide the escort personnel with a copy of applicable rules and shall inspect the escort vehicles for the safety equipment required by the rules. If the escort vehicles and personnel meet the requirements set forth in the rules, the department of public safety shall issue the special permit.

(2) The movement of vehicles upon the highways of this state requiring a special permit and required to use an escort of the type noted in Paragraph (1) of this subsection is subject to the authority of the department of transportation and the department of public safety and to inspection at all times.

(3) The department of transportation shall conduct engineering investigations and engineering inspections to determine which four-lane highways are safe for the operation or movement of manufactured homes without an escort. After making that determination, the department of transportation shall hold public hearings in the area of the state affected by the determination, after which it may adopt rules designating those four-lane highways as being safe for the operation or movement of manufactured homes without an escort. If a portion of such a four-lane highway lies within the boundaries of a municipality, the department of transportation, after obtaining the approval of the municipal governing body, shall include such portions in its rules.

C. Except for the movement of manufactured homes, special permits may be issued for a single vehicle or combination of vehicles by the department of transportation for a period not to exceed one year for a fee of two hundred fifty dollars ($250). The special permits may allow excessive height, length and width for a vehicle or combination of vehicles or load thereon and may include a provision for excessive weight if the weight of the vehicle or combination of vehicles is not greater than one hundred forty thousand pounds. Utility service vehicles, operating with special permits pursuant to this subsection, shall be exempt from prohibitions or restrictions relating to hours or days of operation or restrictions on movement because of poor weather conditions.

D. Special permits for a single trip for a vehicle or combination of vehicles or load thereon of excessive weight, width, length and height may be issued by the department of transportation for a single vehicle for a fee of twenty-five dollars ($25.00) plus the product of two and one-half cents ($.025) for each two thousand pounds in excess of eighty-six thousand four hundred pounds or major fraction thereof multiplied by the number of miles to be traveled by the vehicle or combination of vehicles on the highways of this state.

E. If a vehicle for which a permit is issued pursuant to this section is a manufactured home, the department of transportation or local highway authority issuing the permit shall furnish the following information to the property tax division of the taxation and revenue department, which shall forward the information:

(1) to the county assessor of a county from which a manufactured home is being moved, the date the permit was issued, the location being moved from, the

location being moved to if within the same county, the name of the owner of the manufactured home and the identification and registration numbers of the manufactured home;

(2) to the county assessor of any county in this state to which a manufactured home is being moved, the date the permit was issued, the location being moved from, the location being moved to, the name of the owner of the manufactured home and the registration and identification numbers of the manufactured home; and

(3) to the owner of a manufactured home having a destination in this state, notification that the information required in Paragraphs (1) and (2) of this subsection is being given to the respective county assessors and that manufactured homes are subject to property taxation.

F. Except as provided in Subsection G of this section, if the movement of a manufactured home originates in this state, a permit shall not be issued pursuant to Subsection E of this section until the owner of the manufactured home or the authorized agent of the owner obtains and presents to the department of transportation proof that a certificate has been issued by the county assessor or treasurer of the county in which the manufactured home movement originates showing that either:

(1) all property taxes due or to become due on the manufactured home for the current tax year or any past tax years have been paid, except for manufactured homes located on an Indian reservation; or

(2) liability for property taxes on the manufactured home does not exist for the current tax year or a past tax year, except for manufactured homes located on an Indian reservation.

G. The movement of a manufactured home from the lot or business location of a manufactured home dealer to its destination designated by an owner-purchaser is not subject to the requirements of Subsection F of this section if the manufactured home movement originates from the lot or business location of the dealer and the manufactured home was part of the dealer's inventory prior to the sale to the owner-purchaser; however, the movement of a manufactured home by a dealer or the dealer's authorized agent as a result of a sale or trade-in from a nondealer-owner is subject to the requirements of Subsection F of this section whether the destination is the business location of a dealer or some other destination.

H. A permit shall not be issued pursuant to this section for movement of a manufactured home whose width exceeds eighteen feet with no more than a six-inch roof overhang on the left side or twelve inches on the right side in addition to the eighteen-foot width of the manufactured home. Manufactured homes exceeding the limitations of this section shall only be moved on dollies placed on the front and the rear of the structure.

I. The secretary of transportation may by rule provide for movers of manufactured homes to self-issue permits for certain sizes of manufactured homes over specific routes. The cost of a permit shall not be less than twenty-five dollars ($25.00).

J. The secretary of transportation may provide by rule for dealers of implements of husbandry to self-issue permits for the movement of certain sizes of implements of husbandry from the lot or business location of the dealer over specific routes with specific escort requirements, if necessary, to a destination designated by an owner-purchaser or for purposes of a working demonstration on the property of a proposed owner-purchaser. The department of transportation shall charge a fee for each self-issued permit not to exceed fifteen dollars ($15.00).

K. A private motor carrier requesting an oversize or overweight permit shall provide proof of insurance in at least the following amounts:

(1) bodily injury liability, providing:

(a) fifty thousand dollars ($50,000) for each person; and

(b) one hundred thousand dollars ($100,000) for each accident; and

(2) property damage liability, providing twenty-five thousand dollars ($25,000) for each accident.

L. A motor carrier requesting an oversize permit shall produce a copy of a warrant or a single state registration receipt as evidence that the motor carrier maintains the insurance minimums prescribed by the public regulation commission.

M. The department of transportation may provide by rule the time periods during which a vehicle or load of a size or weight exceeding the maximum specified in Sections 66-7-401 through 66-7-416 NMSA 1978 may be operated or moved by a motor carrier on a highway under the jurisdiction of the state transportation commission or local authorities.

N. An applicant for a special permit to operate a vehicle or combination of vehicles with a gross weight not exceeding ninety-six thousand pounds within six miles of the port of entry at the border with Mexico at Santa Teresa or within a circular quadrant starting at that port of entry with an east boundary line running due north twelve miles from the Santa Teresa port of entry to a point, then along an arc to the west with a twelve-mile radius and central angle of approximately ninety degrees to a point on the international boundary with Mexico, then returning due east twelve miles to the starting point at that port of entry, and twelve miles of other ports of entry on the border with Mexico shall not be required to demonstrate to the department of transportation that the load cannot be reduced as a condition of the issuance of the permit.

O. Revenue from fees for special permits authorizing vehicles and loads of excessive size or weight to operate or move upon a highway under the jurisdiction of the state transportation commission or local authorities shall be collected for the department of transportation and transferred to the state road fund.

**History:** 1953 Comp., § 64-7-413, enacted by Laws 1978, ch. 35, § 484; 1980, ch. 61, § 1; 1983, ch. 295, § 31; 1986, ch. 82, § 1; 1990, ch. 21, § 3; 1993, ch. 104, § 1; 1995, ch. 135, § 22; 2003, ch. 141, § 4; 2003, ch. 142, § 23; 2003, ch. 359, § 42; 2003, ch. 361, § 1; 2003 (1st S.S.), ch. 3, § 21; 2005, ch. 258, § 4; 2007, ch. 209, § 11; 2011, ch. 58, § 1; 2015, ch. 48, § 2; 2021, ch. 59, § 13.

## ANNOTATIONS

**Cross references.** — For requirement of an escort for movement of hazardous vehicles, *see* 66-7-314 NMSA 1978.

For the penalty for a misdemeanor, *see* 66-8-7 NMSA 1978.

For the penalty assessment for violation, *see* 66-8-116 NMSA 1978.

For state transportation commission, *see* N.M. Const., art. V, § 14 and 67-3-2 NMSA 1978.

For county assessor, *see* 4-39-2 NMSA 1978 et seq.

For county treasurer, *see* 4-43-2 NMSA 1978 et seq.

For motor transportation division in department of public safety, *see* 9-19-4 NMSA 1978.

For state transportation department, *see* 67-3-6 NMSA 1978.

**The 2021 amendment,** effective June 18, 2021, made conforming changes due to the transfer of certain authority from the department of public safety to the department of transportation; in Subsection A, after "The department of", deleted "public safety" and added "transportation"; in Subsection B, Paragraph B(1), after "the department of public safety", added "or the department of transportation", and in Paragraph B(2), after "subject to", added "the authority of the department of transportation and the", and after "public safety", deleted "authority"; and after the next occurrence of "department of", changed "public safety" to "transportation".

**The 2015 amendment,** effective June 19, 2015, expanded when the state transportation commission or local authorities may restrict the right to use streets; in Subsection N, after "within", added "six miles of the port of entry at the border with Mexico at Santa Teresa or within a circular quadrant starting at that port of entry with an east boundary line running due north twelve miles from the Santa Teresa port of entry to a point, then along an arc to the west with a twelve-mile radius and central angle of

approximately ninety degrees to a point on the international boundary with Mexico, then returning due east twelve miles to the starting point at that port of entry, and twelve", and after "miles of", deleted "a port" and added "other ports".

**The 2011 amendment,** effective July 1, 2011, added Subsection N to provide that the operator of an overweight vehicle that is operated within six miles of a port of entry on the border with Mexico is not required to demonstrate, as a condition for a permit, that the load cannot be reduced.

**The 2007 amendment,** effective July 1, 2007, eliminated the charge for movement of loads wider than twenty feet or for a distance greater than five miles.

**The 2005 amendment,** effective April 6, 2005, deleted the former provision of Subsection C(1) that if the escort vehicles and personnel meet the requirements of the rules, the department shall not charge an escort fee and that if the motor carrier provides its own escort vehicles and personnel, the department shall require the motor carrier to have a warrant from the public regulation commission; provided in Subsection D that the special permit may include a provision for excessive weight if the weight is not greater than one hundred forty thousand pounds; and deletes the former provision in Subsection D that the special permit may include a provision for excessive weight if the distance traveled is within a one hundred twenty-five miles radius of the origin of the trip.

**The 2003 amendment,** effective July 1, 2003, substituted "state transportation commission" for "state highway commission" in the first sentence of Subsection A; substituted "public regulation commission" for "state corporation commission" in the first and second sentences of Paragraph C(2) and at the end of Subsection M; added the last sentence in D; and inserted "of the department" following "tax division" in F.

Section 66-7-413 NMSA 1978 was also amended by Laws 2003, ch. 141, § 4, Laws 2003, ch. 142, § 23 and Laws 2003, ch. 359, § 42. The section was set out as amended by Laws 2003, ch. 361, § 1. *See* 12-1-8 NMSA 1978.

**The 2003 (1st S.S.) amendment,** effective July 1, 2004, inserted "of public safety" following "department" in Subsections A, B, C, D, F, G and K and following "secretary" in Subsections J and K, substituted "a" for "any" preceding "highway" near the end of the first sentence and "a person to violate a condition or term" for "any person to violate any of the conditions or terms" in the last sentence of Subsection A, "a" for "any" preceding "load" near the beginning of Subsection B, and "rules" for "regulations" near the beginning of the introductory language of Subsection C, rewrote Paragraph (1), deleted former Paragraph (2), redesignated former Paragraphs (3) and (4) as present Paragraphs (2) and (3), and substituted "Paragraph (1)" for "Paragraphs (1) and (2)" in Paragraph (2), "department of transportation" for "state highway and transportation department" in the first, second, and last sentences, "rules" for "regulations" in the second sentence and at the end of the last sentence, and "a" for "any" near the beginning of the last sentence of Paragraph (3) of that subsection, "two hundred fifty

dollars ($250)" for "sixty dollars ($60.00)" at the end of the first sentence, and "the distance traveled by the vehicle or combination of vehicles is within a seventy-five mile radius of the origin of the trip" for "the operation is to be within the vicinity of a municipality" at the end of the second sentence of Subsection D. The amendment also rewrote Subsection E, substituted "a" for "the" preceding "vehicle" and "pursuant to" for "under" preceding "this section" near the beginning, inserted "taxation and revenue" preceding "department," and deleted "then" following "which shall" near the end of the introductory language of Subsection F, substituted "a" for "any" preceding "county" near the beginning of Paragraph (1) of that subsection, and "a permit shall not be issued pursuant to" for "no permit shall be issued under" and "the authorized agent of the owner" for "his authorized agent" in the introductory language of Subsection G, and deleted "no" preceding "liability" and substituted "does not exist" for "exists," and "a past tax year" for "any past tax years" in Paragraph (2) of that subsection. Further, the amendment substituted "the dealer's" for "his" preceding "inventory" and preceding "authorized agent" near the middle of Subsection H, "a permit shall not be issued pursuant to" for "no permit shall be issued under" at the beginning of Subsection I, "rule" for "regulation" and "the cost of a permit shall not be less than twenty-five dollars ($25.00)" for "however, in no case may the cost of a permit be less than fifteen dollars ($15.00)" in Subsection J, "rule" for "regulation" near the beginning of Subsection K, and "a" for "any" at the beginning of Subsection L, substituted "a" for "any common" at the beginning and "warrant or a single state registration receipt as" for "form 'e' or other acceptable" near the middle and deleted "common" preceding "motor carrier" near the end of Subsection M, and added Subsections N and O.

**Compiler's notes.** — Laws 2003 (1st S.S.), ch. 3, § 21, as enacted by the legislature, included the provision "the department of public safety shall issue a special permit within twenty-four hours of the department's receipt of a completed application for the special permit" at the end of Subsection E; however, the provision was vetoed by the governor.

**The 1995 amendment,** effective June 16, 1995, substituted "department" for "motor transportation division" throughout the section and substituted "shall" for "must" in the introductory language of Subsection L and in Subsection M.

**The 1993 amendment,** effective, July 1, 1993, deleted "of the taxation and revenue department" following "secretary" near the beginning of Subsection J, inserted present Subsection K, and redesignated the remaining subsections accordingly.

**The 1990 amendment,** effective July 1, 1990, substituted "restrictions" for "restriction" in the third sentence in Subsection A, substituted "state highway and transportation department" for "state highway department" in three places in Paragraph (4) of Subsection C, added Subsections I to L, and made minor stylistic changes in Subsection A and Paragraph (4) of Subsection C.

**The 1986 amendment** substituted "three hundred dollars ($300)" for "one hundred fifty dollars ($150)" in the first sentence of Subsection B.

**Liability for negligence in permit issuance.** — Any negligent conduct of the Department of Transportation (DOT) in authorizing oversize loads traveling over New Mexico highways is actionable under the Tort Claims Act, Sections 41-4-1 to 41-4-27 NMSA 1978, as such activity is within the scope of the waiver provision, Section 41-4-11 NMSA 1978. *Miller v. New Mexico Dep't of Transp.*, 1987-NMSC-081, 106 N.M. 253, 741 P.2d 1374, superseded by statute, *Rutherford v. Chaves Cnty.*, 2003-NMSC-010, 133 N.M. 756, 69 P.3d 1199.

**Power to administer weight and size regulations properly delegated.** — The power to administer the general regulations controlling the weight and size of vehicles to be operated on the highways of the state of New Mexico which were enacted by the legislature and to grant exceptions to them, when necessary, has been properly delegated to the motor transportation department (now state transportation commission). 1969 Op. Att'y Gen. No. 69-18.

**Regulation of oversize vehicles must be reasonable.** — The use of the highways by vehicles of excess weight, size, length and load may be regulated or limited in consideration of possible injuries to the highway as well as to those using it. This power to regulate is not absolute but is subject to the constitutional provision that no person shall be deprived of property without due process of law. The test of the validity of all such limitations, under the Due Process Clause, is that of reasonableness, and any regulation is void if it is so arbitrary or unreasonable as to become an infringement of the right of ownership. 1962 Op. Att'y Gen. No. 62-105.

**Otherwise void as infringement of ownership right.** — Recognizing that the state highway commission (now state transportation commission) has the power to enforce the statute and to supplement it with rules and regulations,

**Power to issue permits discretionary.** — Section 64-23-22, 1953 Comp. (similar to this section), gives the motor transportation department (now department of public safety) discretionary power to issue permits allowing the operation of vehicles which are not in compliance with the weight and size limitation contained in Sections 64-23-12 through 64-23-25, 1953 Comp. (similar to Sections 66-7-401 to 66-7-416 NMSA 1978), if in its discretion it deems this action to be reasonably necessary. 1969 Op. Att'y Gen. No. 69-18.

**Type of load and route traversed may be specified.** — The highway commission (now department of public safety) may, in its discretion, grant a permit if the conditions prescribed by Section 64-23-22, 1953 Comp. (similar to this section), have been met to the commission's satisfaction. The highway commission may grant such permits and specify the type of loads to be transported, the route or routes to be traversed and may impose such other restrictions or conditions which are reasonably deemed to be necessary. 1962 Op. Att'y Gen. No. 62-105.

**Escort fee collected only if police do escorting.** — The specificity of Section 64-23-22B, 1953 Comp. (similar to Subsection B of this section), refers to the collection of

fees, not to providing a state police escort. Therefore, if a state police escort is used, it is mandatory that the department (now department of public safety) collect certain fees. 1972 Op. Att'y Gen. No. 72-21.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Moving of buildings on highways, validity, construction, and application of statute or other regulation affecting, 83 A.L.R.2d 464.

Liability for accident occurring in motor transportation of house or similar structure on public streets or highways, 9 A.L.R.3d 1436.

## *66-7-413. Permits for excessive size and weight; special notification required on movement of manufactured homes. (Effective July 1, 2024.)*

*A. The department of transportation and local highway authorities may, in their discretion, upon application in writing and good cause being shown, issue a special permit in writing authorizing the applicant to operate or move a vehicle or load of a size or weight exceeding the maximum specified in Sections 66-7-401 through 66-7-416 NMSA 1978 on a highway under the jurisdiction of the state transportation commission or local authorities. Except for the movement of manufactured homes, a permit may be granted, in cases of emergency, for the transportation of loads on a certain unit or combination of equipment for a specified period of time not to exceed one year, and the permit shall contain the route to be traversed, the type of load to be transported and any other restrictions or conditions deemed necessary by the body granting the permit. In every other case, the permit shall be issued for a single trip and may designate the route to be traversed and contain any other restrictions or conditions deemed necessary by the body granting the permit. Every permit shall be carried in the vehicle to which it refers and shall be opened for inspection to any peace officer. It is a misdemeanor for a person to violate a condition or term of the special permit.*

*B. The department of transportation shall promulgate rules in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] pertaining to safety practices, liability insurance and equipment for escort vehicles provided by the motor carrier and for escort vehicles provided by a private business in this state; provided that:*

*(1) the department of public safety or the department of transportation shall provide the escort personnel with a copy of applicable rules and shall inspect the escort vehicles for the safety equipment required by the rules. If the escort vehicles and personnel meet the requirements set forth in the rules, the department of public safety shall issue the special permit;*

*(2) the movement of vehicles upon the highways of this state requiring a special permit and required to use an escort of the type noted in Paragraph (1) of this subsection is subject to the authority of the department of transportation and the department of public safety and to inspection at all times; and*

*(3) the department of transportation shall conduct engineering investigations and engineering inspections to determine which four-lane highways are safe for the operation or movement of manufactured homes without an escort. After making that determination, the department of transportation shall hold public hearings in the area of the state affected by the determination, after which it may adopt rules designating those four-lane highways as being safe for the operation or movement of manufactured homes without an escort. If a portion of such a four-lane highway lies within the boundaries of a municipality, the department of transportation, after obtaining the approval of the municipal governing body, shall include such portions in its rules.*

*C. Except for the movement of manufactured homes, special permits may be issued for a single vehicle or combination of vehicles by the department of transportation for a period not to exceed one year for a fee of two hundred fifty dollars ($250). The special permits may allow excessive height, length and width for a vehicle or combination of vehicles or load thereon and may include a provision for excessive weight if the weight of the vehicle or combination of vehicles is not greater than one hundred forty thousand pounds. Utility service vehicles, operating with special permits pursuant to this subsection, shall be exempt from prohibitions or restrictions relating to hours or days of operation or restrictions on movement because of poor weather conditions.*

*D. Special permits for a single trip for a vehicle or combination of vehicles or load thereon of excessive weight, width, length and height may be issued by the department of transportation for a single vehicle for a fee of twenty-five dollars ($25.00) plus the product of two and one-half cents ($.025) for each two thousand pounds in excess of eighty-six thousand four hundred pounds or major fraction thereof multiplied by the number of miles to be traveled by the vehicle or combination of vehicles on the highways of this state.*

*E. If a vehicle for which a permit is issued pursuant to this section is a manufactured home, the department of transportation or local highway authority issuing the permit shall furnish the following information to the property tax division of the taxation and revenue department, which shall forward the information:*

*(1) to the county assessor of a county from which a manufactured home is being moved, the date the permit was issued, the location being moved from, the location being moved to if within the same county, the name of the owner of the manufactured home and the identification and registration numbers of the manufactured home;*

*(2) to the county assessor of any county in this state to which a manufactured home is being moved, the date the permit was issued, the location being moved from, the location being moved to, the name of the owner of the manufactured home and the registration and identification numbers of the manufactured home; and*

*(3) to the owner of a manufactured home having a destination in this state, notification that the information required in Paragraphs (1) and (2) of this subsection is*

*being given to the respective county assessors and that manufactured homes are subject to property taxation.*

*F. Except as provided in Subsection G of this section, if the movement of a manufactured home originates in this state, a permit shall not be issued pursuant to Subsection E of this section until the owner of the manufactured home or the authorized agent of the owner obtains and presents to the department of transportation proof that a certificate has been issued by the county assessor or treasurer of the county in which the manufactured home movement originates showing that either:*

*(1) all property taxes due or to become due on the manufactured home for the current tax year or any past tax years have been paid, except for manufactured homes located on an Indian reservation; or*

*(2) liability for property taxes on the manufactured home does not exist for the current tax year or a past tax year, except for manufactured homes located on an Indian reservation.*

*G. The movement of a manufactured home from the lot or business location of a manufactured home dealer to its destination designated by an owner-purchaser is not subject to the requirements of Subsection F of this section if the manufactured home movement originates from the lot or business location of the dealer and the manufactured home was part of the dealer's inventory prior to the sale to the owner-purchaser; however, the movement of a manufactured home by a dealer or the dealer's authorized agent as a result of a sale or trade-in from a nondealer-owner is subject to the requirements of Subsection F of this section whether the destination is the business location of a dealer or some other destination.*

*H. A permit shall not be issued pursuant to this section for movement of a manufactured home whose width exceeds eighteen feet with no more than a six-inch roof overhang on the left side or twelve inches on the right side in addition to the eighteen-foot width of the manufactured home. Manufactured homes exceeding the limitations of this section shall only be moved on dollies placed on the front and the rear of the structure.*

*I. The secretary of transportation may by rule provide for movers of manufactured homes to self-issue permits for certain sizes of manufactured homes over specific routes. The cost of a permit shall not be less than twenty-five dollars ($25.00).*

*J. The secretary of transportation may provide by rule for dealers of implements of husbandry to self-issue permits for the movement of certain sizes of implements of husbandry from the lot or business location of the dealer over specific routes with specific escort requirements, if necessary, to a destination designated by an owner-purchaser or for purposes of a working demonstration on the property of a proposed owner-purchaser. The department of transportation shall charge a fee for each self-issued permit not to exceed fifteen dollars ($15.00).*

*K. A private motor carrier requesting an oversize or overweight permit shall provide proof of insurance in at least the following amounts:*

*(1) bodily injury liability, providing:*

*(a) fifty thousand dollars ($50,000) for each person; and*

*(b) one hundred thousand dollars ($100,000) for each accident; and*

*(2) property damage liability, providing twenty-five thousand dollars ($25,000) for each accident.*

*L. A motor carrier requesting an oversize permit shall produce a copy of a warrant or a single state registration receipt as evidence that the motor carrier maintains the insurance minimums prescribed by the department of transportation.*

*M. The department of transportation may provide by rule the time periods during which a vehicle or load of a size or weight exceeding the maximum specified in Sections 66-7-401 through 66-7-416 NMSA 1978 may be operated or moved by a motor carrier on a highway under the jurisdiction of the state transportation commission or local authorities.*

*N. An applicant for a special permit to operate a vehicle or combination of vehicles with a gross weight not exceeding ninety-six thousand pounds within six miles of the port of entry at the border with Mexico at Santa Teresa or within a circular quadrant starting at that port of entry with an east boundary line running due north twelve miles from the Santa Teresa port of entry to a point, then along an arc to the west with a twelve-mile radius and central angle of approximately ninety degrees to a point on the international boundary with Mexico, then returning due east twelve miles to the starting point at that port of entry, and twelve miles of other ports of entry on the border with Mexico shall not be required to demonstrate to the department of transportation that the load cannot be reduced as a condition of the issuance of the permit.*

*O. Revenue from fees for special permits authorizing vehicles and loads of excessive size or weight to operate or move upon a highway under the jurisdiction of the state transportation commission or local authorities shall be collected for the department of transportation and transferred to the state road fund.*

***History:*** *1953 Comp., § 64-7-413, enacted by Laws 1978, ch. 35, § 484; 1980, ch. 61, § 1; 1983, ch. 295, § 31; 1986, ch. 82, § 1; 1990, ch. 21, § 3; 1993, ch. 104, § 1; 1995, ch. 135, § 22; 2003, ch. 141, § 4; 2003, ch. 142, § 23; 2003, ch. 359, § 42; 2003, ch. 361, § 1; 2003 (1st S.S.), ch. 3, § 21; 2005, ch. 258, § 4; 2007, ch. 209, § 11; 2011, ch. 58, § 1; 2015, ch. 48, § 2; 2021, ch. 59, § 13; 2023, ch. 100, § 78.*

***ANNOTATIONS***

***The 2023 amendment,*** *effective July 1, 2024, removed a reference to the public regulation commission due to the transfer of certain powers and duties to the department of transportation; in Subsection L, after "prescribed by the", changed "public regulation commission" to "department of transportation".*

## 66-7-413.1. Hay transportation; excessive size; special permit allowance.

A vehicle used to transport loads of hay greater than one hundred two inches wide may be issued a special permit to transport loads pursuant to Section 66-7-413 NMSA 1978; provided that the vehicle is marked on the front and the rear with "OVERSIZED LOAD" signs. The area covered by the special permit shall be specified on the permit.

**History:** 1978 Comp., § 66-7-413.1, enacted by Laws 1985, ch. 4, § 1; 1993, ch. 328, § 6; 1995, ch. 28, § 1; 1995, ch. 135, § 23; 2012, ch. 2, § 1.

**ANNOTATIONS**

**The 2012 amendment,** effective February 14, 2012, rewrote the section to permit the issuance of special permits for vehicles used to transport loads of hay that are more than one hundred two inches wide.

**The 1995 amendment,** effective June 16, 1995, inserted "on highways that are not national network highways" following "twelve feet in width", and made a minor stylistic change.

**The 1993 amendment,** effective July 1, 1993, deleted "six inches" after "twelve feet".

## 66-7-413.2. Engineering investigations for vehicles in excess of one hundred seventy thousand pounds.

A. All vehicles with a gross vehicle weight in excess of one hundred seventy thousand pounds shall require a special permit as provided for in Section 66-7-413 NMSA 1978, and no such permit shall be issued unless:

(1) an engineering investigation and review have been conducted to:

(a) establish whether the move could be made without visible or documented damages to the portion of road or bridges upon which the move is to be made;

(b) establish whether the move could be made without visible or documented damages to any private facilities along the road upon which the move is to be made; and

(c) estimate the cost for any necessary modifications the move may cause; and

(2) when required, the applicant has submitted to the department of transportation and the local highway authorities all pertinent information requested of the applicant by the department of transportation and the New Mexico state police division. If the submitted data are not acceptable to the department of transportation, the applicant will be advised by the New Mexico state police division that engineering investigations will be conducted by the department of transportation, and the cost incurred by the department of transportation will be paid by the applicant as an added cost to the permit fee.

B. The department of transportation shall adopt the necessary rules for the development of data for an investigation to determine whether to issue any special permit pursuant to Section 66-7-413 NMSA 1978.

C. The applicant or the applicant's employer shall pay the costs for any modifications to the road, bridges or private facilities along the road that the department of transportation has determined are necessary for the issuance of the special permit and the costs for any damages to the road or bridges that are the result of the move and the fault of the mover and not the department of transportation.

D. Any person who violates the provisions of Subsection A of this section is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars ($1,000) or imprisonment for a definite term not to exceed six months, or both.

E. Nothing contained in this section shall limit in any manner the authority of the state, a county, a municipality or a political subdivision to collect damages for any unlawful use of highways as provided by law.

**History:** Laws 1989, ch. 291, § 1; 2003, ch. 141, § 5; 2015, ch. 3, § 38; 2021, ch. 59, § 14.

## ANNOTATIONS

**The 2021 amendment,** effective June 18, 2021, made conforming changes due to the transfer of certain authority from the department of public safety to the department of transportation; in Subsection A, Paragraph A(2), after "submitted to the", deleted "New Mexico state police division of the department of public safety" and added "department of transportation", and after "applicant by", added "the department of transportation and"; in Subsection B, after "The", deleted "New Mexico state police division" and added "department of transportation", and after "rules", deleted "and regulations"; and in Subsection C, after "along the road that the", deleted "New Mexico state police division" and added "department of transportation", and after "mover and not the", deleted "New Mexico state police division" and added "department of transportation".

**The 2015 amendment,** effective July 1, 2015, provided the New Mexico state police division of the department of public safety with the authority to initiate engineering investigations for the purpose of issuing special permits for vehicles in excess of one hundred seventy thousand pounds; in Subsection A, Paragraph 2, substituted "New Mexico state police" for "motor transportation" throughout the paragraph; in the first sentence of Paragraph 2, after the second occurrence of "division", deleted "of the department of public safety"; in the second sentence of Paragraph 2, after "data", deleted "is" and added "are", after "acceptable to the", deleted "state highway and" and added "department of", after the first occurrence of "transportation", deleted "department", after "division" deleted "of the department of public safety", after "conducted by the", deleted "state highway and" and added "department of", after the second occurrence of "transportation", deleted "department", after "incurred by the", deleted "state highway and" and added "department of", after the third occurrence of "transportation", deleted "department", and after "added cost to", deleted "his" and added "the"; in Subsection B, after "The", deleted "motor transportation" and added "New Mexico state police", and after "division", deleted "of the department of public safety"; in Subsection C, after "road that the", deleted "motor transportation" and added "New Mexico state police", and after each occurrence of "division", deleted "of the department of public safety", and after "mover and not the", deleted "motor transportation" and added "New Mexico state police"; in Subsection D, after "section", deleted "shall be" and added "is", and after "misdemeanor and", added "shall be"; and in Subsection E, after "subdivision", deleted "thereof".

**The 2003 amendment,** effective June 30, 2003, inserted "of the department of public safety" following "division" throughout the section.

## 66-7-413.3. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 2001, ch. 20. § 3 repealed 66-7-413.3 NMSA 1978, as enacted by Laws 1991, ch. 227, § 1, relating to single trip or yearly permits for vehicles of excessive weight, effective March 13, 2001. For provisions of the former section, *see* the 2000 NMSA 1978 on *NMOneSource.com.*

## 66-7-413.4. Permits for excessive weight.

A. In addition to the authority granted in Section 66-7-413 NMSA 1978, the department of transportation may issue special permits authorizing an increase of up to twenty-five percent in axle weight for liquid hauling tank vehicles whenever the liquid hauling tank vehicles would have to haul less than a full tank under the maximum weights authorized in Sections 66-7-409 and 66-7-410 NMSA 1978. A special permit under this section may be issued for a single trip or for a year. The fee for the permits shall be thirty-five dollars ($35.00) for a single-trip permit and one hundred twenty dollars ($120) for an annual permit. Revenue from the permit fee shall be used to build, maintain, repair or reconstruct the highways and bridges of this state. Revenue from

the permit shall be collected for the department of transportation and transferred to the state road fund.

B. The special permits authorized by this section shall not be valid for transportation of excessive weights on the interstate system as currently defined in federal law or as that system may be defined in the future. A special permit issued pursuant to this section shall not be valid for gross vehicle weights in excess of eighty-six thousand four hundred pounds or for a combination vehicle.

C. If the federal highway administration of the United States department of transportation gives official notice that money will be withheld or that this section violates the grandfather provision of 23 USCA 127, the secretary may withdraw all special permits and discontinue issuance of all special permits authorized in this section until such time that final determination is made. If the final determination allows the state to issue the special permits without sanction of funds or weight tables, the secretary shall reissue the special permits previously withdrawn and make the special permits available pursuant to this section.

**History:** Laws 2001, ch. 20, § 2; 2003 (1st S.S.), ch. 3, § 22; 2015, ch. 3, § 39; 2021, ch. 59, § 15.

**ANNOTATIONS**

**The 2021 amendment,** effective June 18, 2021, made conforming changes due to the transfer of certain authority from the department of public safety to the department of transportation; and in Subsection A, after "NMSA 1978, the", deleted "New Mexico state police division of the department of public safety" and added "department of transportation".

**The 2015 amendment,** effective July 1, 2015, provided the New Mexico state police division of the department of public safety with the authority to issue special permits for certain vehicles to carry excessive weight, as part of the reorganization of the department of public safety; in Subsection A, after "NMSA 1978, the", deleted "motor transportation" and added "New Mexico state police", and after "weights authorized in", changed "Section" to Sections".

**The 2003 (1st S.S.) amendment,** effective July 1, 2004, added the last sentence in Subsection A; in the second sentence of Subsection B, substituted "a" for "no" and inserted "not" following "shall"; and in the the last sentence of Subsection C, deleted "then" preceding "the secretary".

## 66-7-413.5. Exemption; vehicles used to transport seed cotton modules; limitations.

A. A seed cotton module transport vehicle may transport loads without securing a permit or escort if:

(1) the vehicle is:

(a) no wider than nine feet;

(b) no longer than forty-eight feet; and

(c) no higher than fourteen feet six inches;

(2) the load is not transported for a distance greater than one hundred miles;

(3) the gross vehicle weight of the vehicle is less than fifty-nine thousand four hundred pounds;

(4) the vehicle is marked on the front and the rear with "OVERSIZED LOAD" signs; and

(5) the vehicle is not operated on highways for which a more strict size or weight limitation is required by federal law.

B. If the owner of a seed cotton module transport vehicle transports a load of more than fifty-nine thousand four hundred pounds, the owner is liable to the state, county or municipality for damage to a highway, street, road or bridge caused by the weight of the load and transport.

C. If the seed cotton module transport vehicle is not operated on routes identified by the department of transportation as having deficient bridge structures, the owner or operator shall obtain and have in possession the deficient bridge information from the department on an annual basis.

D. As used in this section, "seed cotton module transport vehicle" means a motor vehicle, trailer or combination of motor vehicle with trailer used exclusively to transport a seed cotton module.

**History:** Laws 2003, ch. 333, § 1; 2021, ch. 59, § 16.

**ANNOTATIONS**

**The 2021 amendment,** effective June 18, 2021, made conforming changes due to the transfer of certain authority to the department of transportation; and in Subsection C, after "identified by the", deleted "state highway and" and added "department of", and after "transportation", deleted "department".

## 66-7-413.6. Multiple trip special permit allowance; vehicles used to transport oilfield equipment; limitations.

A. An oilfield equipment transport vehicle may be issued a special permit to transport loads for multiple trips pursuant to Section 66-7-413 NMSA 1978. The area covered by the special permit shall be specified on the permit.

B. The multiple trip special permits for oilfield equipment transport vehicles may be issued for a load with a maximum width not to exceed twenty-two feet, a maximum height not to exceed twenty feet and a maximum length not to exceed one hundred ten feet; provided that:

(1) any load wider than twenty feet and higher than eighteen feet requires:

(a) a private escort; and

(b) a survey of the route for clearance of any overhead structures and width clearances prior to undertaking the move;

(2) the gross vehicle weight of the loaded vehicle is less than one hundred forty thousand pounds;

(3) the vehicle is marked on the front and the rear with "OVERSIZED LOAD" signs; and

(4) the vehicle is not operated on highways for which a more strict size or weight limitation is required by federal law.

C. The oilfield equipment transport vehicle shall not be operated on routes identified by the department of transportation as having deficient bridge structures. The owner or operator of the oilfield equipment transport vehicle shall obtain and have in its possession the deficient bridge information from the department, which shall be updated annually.

D. As used in this section, "oilfield equipment transport vehicle" means a motor vehicle, trailer or combination of a motor vehicle with a trailer used exclusively for hauling equipment or materials used in the production of oil or gas.

**History:** Laws 2007, ch. 43, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 43, contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

## 66-7-413.7. Multiple trip special permit allowance; fee; vehicles used to transport agricultural products; limitations.

A. An agricultural product transport vehicle may be issued a special permit for an annual fee of two hundred fifty dollars ($250) to transport loads for multiple trips pursuant to Section 66-7-413 NMSA 1978. The area covered by the special permit shall be specified on the permit.

B. The multiple trip special permits for agricultural product transport vehicles may be issued for up to five thousand pounds over the gross vehicle weight pursuant to Section 66-7-410 NMSA 1978.

C. An agricultural product transport vehicle shall not be operated on highways for which a more strict size or weight limitation is required by federal law.

D. An agricultural product transport vehicle shall not be operated on routes identified by the department of transportation as having deficient bridge structures. The owner or operator of the agricultural product transport vehicle shall obtain and have in the owner's or operator's possession a copy of the restrictions imposed by the state transportation commission pursuant to Section 66-7-415 NMSA 1978 regarding the size and weight of vehicles operated on a highway under the jurisdiction of that commission.

E. As used in this section, "agricultural product transport vehicle" means a motor vehicle, freight trailer or utility trailer or a combination thereof used exclusively for hauling agricultural products harvested in an agricultural area that lies within New Mexico or within New Mexico and in an adjacent state.

**History:** Laws 2008, ch. 63, § 2; 2021, ch. 59, § 17.

**ANNOTATIONS**

**The 2021 amendment,** effective June 18, 2021, made conforming changes due to the transfer of certain authority to the department of transportation; and in Subsection D, after "identified by the department", added "of transportation".

## 66-7-413.8. Multiple-trip permit for specialized haul vehicles.

A special multiple-trip permit may be issued for a single vehicle with a load in excess of the weight allowed in Section 66-7-410 NMSA 1978 if:

A. the vehicle has an overall length of not more than forty feet and contains a group of four to seven axles having a distance in feet between the first and last axle of at least twenty feet but not greater than thirty-six feet;

B. the weight imposed upon the highway through any one axle of the vehicle does not exceed that allowed in Section 66-7-409 NMSA 1978;

C. the weight imposed upon the highway through a tandem axle of the vehicle does not exceed thirty-four thousand pounds. For the purpose of this subsection, "tandem

axle" means two or more consecutive axles whose centers may be included between parallel transverse vertical planes spaced more than forty inches and not more than ninety-six inches apart, extending across the full width of the vehicle;

D. the total gross weight imposed upon the highway on a group of two or more consecutive axles of the vehicle shall not exceed the weight computed using and listed in the following formula and table, but in no case greater than eighty thousand pounds:

(1) $W = 500(LN/(N-1) + 12N + 36)$, where:
W = maximum overall gross weight on the group;
L = distance in feet between the extremes of any group of two or more consecutive axles measured longitudinally to the nearest foot; and
N = number of axles in the group under consideration; and
(2)

| L (feet) | W (pounds) | | | |
|---|---|---|---|---|
| | 4 axles | 5 axles | 6 axles | 7 axles |
| 20 | 55,500 | 60,500 | 66,000 | |
| 21 | 56,000 | 61,000 | 66,500 | |
| 22 | 56,500 | 61,500 | 67,000 | |
| 23 | 57,500 | 62,500 | 68,000 | |
| 24 | 58,000 | 63,000 | 68,500 | 74,000 |
| 25 | 58,500 | 63,500 | 69,000 | 74,500 |
| 26 | 59,500 | 64,000 | 69,500 | 75,000 |
| 27 | 60,000 | 65,000 | 70,000 | 75,500 |
| 28 | 60,500 | 65,500 | 71,000 | 76,500 |
| 29 | 61,500 | 66,000 | 71,500 | 77,000 |
| 30 | 62,000 | 66,500 | 72,000 | 77,500 |
| 31 | 62,500 | 67,500 | 72,500 | 78,000 |
| 32 | 63,500 | 68,000 | 73,000 | 78,500 |
| 33 | 64,000 | 68,500 | 74,000 | 79,000 |
| 34 | 64,500 | 69,000 | 74,500 | 80,000 |
| 35 | 65,500 | 70,000 | 75,000 | 80,000 |
| 36 | 66,000 | 70,500 | 75,500 | 80,000; |

and

E. other requirements are met as established by rule of the secretary of public safety, including the payment of a reasonable permit fee.

**History:** Laws 2015, ch. 49, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2015, ch. 49, § 2 makes Laws 2015, ch. 49, § 1 effective January 1, 2016.

## 66-7-414. Exemptions; implements of husbandry.

A. No permit or fee required under Section 66-7-413 NMSA 1978 is necessary for implements of husbandry, including farm tractors and farm trailers when not more than two such farm trailers are towed in tandem, being moved during daylight hours within a county or an adjacent county for a total distance, one way, of not more than fifty miles on any highway:

(1) crossing the farm property of the owner; or

(2) running between separate farm property of the owner.

B. Any person responsible for the movement of implements of husbandry under the provisions of this section shall comply with all safety precautions set forth in the Motor Vehicle Code [66-1-1 NMSA 1978] and in regulations of the state highway commission.

**History:** 1953 Comp., § 64-7-414, enacted by Laws 1978, ch. 35, § 485; 1979, ch. 323, § 2.

**ANNOTATIONS**

**Cross references.** — For definitions of "farm tractor" and "implement of husbandry", *see* 66-1-4.6 and 66-1-4.9 NMSA 1978, respectively.

## 66-7-415. When the state transportation commission or local authorities may restrict right to use streets.

A. Local authorities, with respect to streets under their jurisdiction, may also, by ordinance or resolution, prohibit the operation of trucks or other commercial vehicles or may impose limitations as to size or weight, on designated streets in areas that are primarily residential or that pass by educational or medical facilities or on streets that are not designed or constructed for heavy weight vehicles, which prohibitions and limitations shall be designated by appropriate signs placed on the street.

B. The local authority enacting an ordinance or resolution shall erect or cause to be erected and maintained signs designating the provisions of the ordinance or resolution at each end of that portion of the street affected, and the ordinance or resolution shall not be effective until signs are erected and maintained and notice given in writing to the nearest officer or employee of the New Mexico state police division of the department of public safety authorized to issue special permits.

C. The state transportation commission shall likewise have authority, as granted to local authorities in Subsections A and B of this section, to determine by resolution and to impose restrictions as to the size and weight of vehicles operated upon any highways under the jurisdiction of the commission, and such restrictions shall be effective upon the passage of a resolution and when signs giving notice thereof are erected upon the highway or portion of any highway affected by the resolution. The commission shall deliver a copy of all restrictions adopted by it to the New Mexico state police division of the department of public safety.

**History:** 1953 Comp., § 64-23-23, enacted by Laws 1955, ch. 37, § 12; 1967, ch. 97, § 27; 1977, ch. 250, § 70; recompiled as 1953 Comp., § 64-7-415, by Laws 1978, ch. 35, § 486; 2003, ch. 142, § 24; 2015, ch. 3, § 40; 2015, ch. 48, § 1.

## ANNOTATIONS

**2015 Multiple Amendments.** — Laws 2015, ch. 3, § 40 and Laws 2015, ch. 48, § 1 enacted different amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 2015, ch. 48, § 1, as the last act signed by the governor, is set out above and incorporates both amendments. The amendments enacted by Laws 2015, ch. 3, § 40 and Laws 2015, ch. 48, § 1 are described below. To view the session laws in their entirety, *see* the 2015 session laws on *NMOneSource.com*.

The nature of the difference between the amendments is that Laws 2015, ch. 48, § 1 authorizes local authorities to impose limits on the size and weight of vehicles that pass by educational or medical facilities or on streets that are not designed for heavy weight vehicles. The existing law requires local authorities to give notice in writing to the motor transportation division of the department of public safety and allows the state transportation commission to impose similar restrictions upon passage of a resolution. The state transportation commission is required to deliver all restrictions adopted by it to the motor transportation division of the department of public safety. Laws 2015, ch. 3, § 40 is part of the reorganization of the department of public safety and eliminates the motor transportation division as a division of the department of public safety, creates a motor transportation police bureau under the New Mexico state police division of the department of public safety, and removes all references to the motor transportation division and refers instead to the New Mexico state police division of the department of public safety.

Laws 2015, ch. 48, § 1, effective June 19, 2015, in Subsection A, after "limitations as to", deleted "the", after "size or weight", deleted "thereof", after "residential", added "or that pass by educational or medical facilities or on streets that are not designed or constructed for heavy weight vehicles", and after "placed on", deleted "such" and added "the"; in Subsection B, after "portion of", deleted "any" and added "the", after "effective", deleted "unless and", after "until", deleted "such", after "notice", deleted "thereof"; and in Subsection C, after "effective", deleted "on and after" and added "upon", and after "affected by", deleted "such" and added "the".

Laws 2015, ch. 3, § 40, effective July 1, 2015, in Subsection A, after "limitations as to", deleted "the", after "size or weight", deleted "thereof", and after "placed on", deleted "such" and added "the"; in Subsection B, after "portion of", deleted "any" and added "the", after "effective", deleted "unless and", after "until", deleted "such", after "notice", deleted "thereof", and after "employee of the", deleted "motor transportation" and added "New Mexico state police"; and in Subsection C, after "effective", deleted "on and after" and added "upon", after "affected by", deleted "such" and added "the", and after "adopted by it to the", deleted "motor transportation" and added "New Mexico state police".

**The 2003 amendment,** effective July 1, 2003, substituted "transportation commission" for "highway commission" in the section heading and Subsection C; and inserted "of the department of public safety" following "transportation division" in Subsection B.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 171, 196 to 201.

40 C.J.S. Highways §§ 243, 244; 60 C.J.S. Motor Vehicles §§ 32, 43.

## 66-7-416. Liability for damage; unlawful use of highways; penalties.

A. The public highways in the state are dedicated to the reasonable use thereof by the public.

B. It shall be unlawful for any person to injure or damage any public highway or street or any bridge, culvert, sign, signpost or structure upon or used or constructed in connection with any public highway or street for the protection thereof or for protection or regulation of traffic thereon by any unsual [unusual], improper or unreasonable use thereof, or by the careless driving or use of any vehicle thereon, or by willful mutilation, defacing or destruction thereof.

C. It shall be considered unreasonable use of any bridge or structure to operate or conduct upon or over the same any vehicle, tractor or engine, not in accordance with Sections 66-7-401 through 66-7-416 NMSA 1978.

D. It shall be considered unreasonable use of any improved highway, roadway or street, to operate, drive or haul thereon any truck, tractor or engine in such manner or at times when the surface thereof is in a soft or plastic condition and the road or portion thereof has been closed pursuant to law, or by order of the state highway department.

E. It shall be unlawful to erect or maintain any fence or any other structure across any street, highway or roadway without written permit from the authorities having control thereof.

F. Any person violating any provision of this section shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty-

five dollars ($25.00) nor more than one hundred dollars ($100), or by imprisonment in the county jail not less than five days nor more than thirty days or by both such fine and imprisonment, and the operator and the owner of such vehicle, truck, tractor or engine from whom the driver or operator has permitted possession at the time thereof shall be jointly and severally liable to the state, county or municipality as the case may be for the actual damage caused by the operation, conducting or hauling thereof over any public highway, street, bridge, culvert or structure in violation of any provision of this act to be collected by suit brought in the name of the state, county or municipality having control of such highway or street; and such vehicle, truck, tractor or engine may be attached and held to satisfy and [any] judgment for such damages.

G. The proceeds of any such judgment shall be paid to the treasurer of the state, or of such county or municipality and placed to the credit of a fund for the construction and improvement of roads or streets.

**History:** 1953 Comp., § 64-7-416, enacted by Laws 1978, ch. 35, § 487.

**ANNOTATIONS**

**Cross references.** — For general definitions applicable to this section, *see* 66-1-4 to 66-1-4.20 NMSA 1978.

For the penalty for a misdemeanor, *see* 66-8-7 NMSA 1978.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not a part of the law.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 40 Am. Jur. 2d Highways, Streets, and Bridges § 608.

Measure and elements of damages for injury to bridge, 31 A.L.R.5th 171.

61A C.J.S. Motor Vehicles § 685.

# PART 6
# TRAFFIC SAFETY

## 66-7-501. Short title.

Sections 66-7-501 through 66-7-513 NMSA 1978 may be cited as the "Traffic Safety Act".

**History:** 1953 Comp., § 64-7-501, enacted by Laws 1978, ch. 35, § 488; 2003, ch. 148, § 1.

**ANNOTATIONS**

**The 2003 amendment,** effective June 20, 2003, substituted "66-7-501 through 66-7-513 NMSA 1978" for "64-7-501 through 64-7-511".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Judicial review of orders under National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C.A. §1381 et seq.). 18 A.L.R. Fed. 610.

## 66-7-502. Legislative intent.

A. The legislature declares that there should be accurate information about the causes of traffic accidents which result in fatalities and in serious injuries on the highways of this state.

B. Special accident-investigation units have made valuable discoveries of the incidence of driver intoxication and of mechanical defects in motor vehicle accidents. The legislature intends to promote and encourage the work of accident-investigation units.

**History:** 1953 Comp., § 64-33-2, enacted by Laws 1976 (S.S.), ch. 8, § 2; recompiled as 1953 Comp., § 64-7-502, by Laws 1978, ch. 35, § 489.

**ANNOTATIONS**

**Repeals.** — Laws 1976 (S.S.), ch. 8, § 14, repealed former 64-33-2, 1953 Comp., relating to the creation of the New Mexico traffic safety commission, effective July 1, 1976.

## 66-7-503. Definitions.

As used in the Traffic Safety Act:

A. "bureau" means the traffic safety bureau of the department;

B. "chief" means the administrative head of the bureau;

C. "committee" means the advisory committee to the bureau; and

D. "department" means the state highway and transportation department.

**History:** 1953 Comp., § 64-7-503, enacted by Laws 1978, ch. 35, § 490; 1987, ch. 268, § 28.

**ANNOTATIONS**

**The 1987 amendment,** effective July 1, 1987, substituted "department" for "division" in Subsection A, deleted the former Subsections D and E, and added the present Subsection D.

## 66-7-504. Bureau; creation; administrative head.

A. There is created within the department the "traffic safety bureau". The chief shall receive no additional salary because of his activity as chief of the bureau.

B. The department shall employ such personnel and hire such consultants as are required to carry out the provisions of the Traffic Safety Act.

**History:** 1953 Comp., § 64-7-504, enacted by Laws 1978, ch. 35, § 491; 1987, ch. 268, § 29.

**ANNOTATIONS**

**The 1987 amendment,** effective July 1, 1987, in Subsection A substituted "department" for "division" in the first sentence and deleted the former second sentence as set out in the main pamphlet; and in Subsection B substituted "department" for "director".

## 66-7-505. Advisory committee; creation; members; terms.

A. There is created a five-member advisory committee to the bureau. The chief is, ex officio, the chair and a voting member of the committee. The governor shall appoint three members, to terms coterminous with the governor's tenure, who shall have the following qualifications:

(1) one member who is representative of the law enforcement agencies of this state;

(2) one member who is representative of the school bus transportation function of the public education department; and

(3) one member who is representative of the New Mexico state police division of the department of public safety.

B. Appointees who are public officers or public employees shall be compensated for attendance at meetings according to the Per Diem and Mileage Act. Appointees who are not public officers or employees shall be compensated for attendance at meetings in commensurate amount.

**History:** 1953 Comp., § 64-7-505, enacted by Laws 1978, ch. 35, § 492; 1987, ch. 268, § 30; 2007, ch. 319, § 62; 2015, ch. 3, § 41.

**ANNOTATIONS**

**The 2015 amendment,** effective July 1, 2015, provided the New Mexico state police division of the department of public safety with a position on the advisory committee to the traffic safety bureau of the state highway and transportation department, as part of the reorganization of the department of public safety; in Subsection A, Paragraph 3, after "representative of the", deleted "motor transportation" and added "New Mexico state police".

**The 2007 amendment,** effective June 15, 2007, changed "taxation and revenue department" to "department of public safety".

**The 1987 amendment,** effective July 1, 1987, in Subsection A substituted "chief" for "director" at the beginning of the second sentence and substituted "three members" for "four members" in the third sentence of the opening clause, deleted the former Paragraph (2) as set out in the main pamphlet, and renumbered the subsequent paragraphs, and in Paragraph (3) added at the end "of the taxation and revenue department" and made minor changes in language and punctuation throughout the section.

## 66-7-506. Bureau; functions; powers; duties.

The bureau shall have the following powers and duties:

A. organize, plan and conduct a statewide program of activities designed to prevent accidents and to reduce the incidence of DWI in New Mexico;

B. coordinate activities and programs of the departments, divisions and agencies of this state now engaged in promoting traffic safety;

C. provide accident prevention information and publicity to all appropriate media of information and develop other means of public information;

D. cooperate with all public and private agencies and organizations interested in the promotion of traffic safety and accident prevention;

E. serve as a clearinghouse for all traffic safety materials and information used throughout this state;

F. cooperate in promoting research, special studies and analysis of problems concerning the safety and welfare of the citizens of New Mexico;

G. cooperate fully with national safety organizations in bringing about greater effectiveness in nationwide accident prevention activities and programs;

H. make studies and suitable recommendations, through the chief and the secretary of transportation, to the legislature concerning safety regulations and laws;

I. prepare and submit each year a written report to the governor concerning the activities of the bureau and activities concerning assistance to local organizations and officials;

J. institute and administer a statewide motorcycle training program funded as provided for in Section 66-10-10 NMSA 1978;

K. institute and administer an accident prevention course for elderly drivers as provided for in Section 59A-32-14 NMSA 1978;

L. cooperate with the public education department to develop a regulatory framework for instructional and administrative processes, including licensure requirements for instructors, and a curriculum for instruction in defensive driving with a DWI education and prevention component to be offered statewide in secondary schools as an elective;

M. institute and administer a DWI prevention and education program for elementary and secondary school students, funded as provided for in Section 66-5-35 NMSA 1978;

N. include at least two hours of DWI prevention and education training in all driver education courses approved by the bureau; and

O. include a DWI recidivism prevention component in all driver rehabilitation programs for alcohol or drugs approved by the bureau.

**History:** 1953 Comp., § 64-7-506, enacted by Laws 1978, ch. 35, § 493; 1987, ch. 268, § 31; 1989, ch. 164, § 2; 1993, ch. 68, § 44; 2007, ch. 201, § 1.

## ANNOTATIONS

**The 2007 amendment,** effective June 15, 2007, added Subsection O.

**The 1993 amendment,** effective July 1, 1993, inserted present Subsection L and redesignated former Subsections L and M as present Subsections M and N.

**The 1989 amendment,** effective June 16, 1989, substituted "secretary of highway and transportation" for "secretary of the state highway and transportation department" in Subsection H and added Subsections J to L.

**The 1987 amendment,** effective July 1, 1987, in Subsection H inserted "state highway and" preceding "transportation" and made minor changes in language and punctuation throughout the section.

**Traffic safety bureau's duty to approve motor vehicle accident prevention courses.** — Subsection K of this section requires the traffic safety bureau to implement and administer an accident prevention course for drivers age fifty-five and older. The

Driver's School Licensing Act (DSL Act), 66-10-1 to 66-10-12 NMSA 1978, exempts nonprofit corporations that provide motor vehicle accident prevention courses approved by the traffic safety bureau and are engaged in providing courses exclusively for drivers who are fifty years of age or older from the DSL Act's requirements; this exemption does not suggest that the traffic safety bureau may only approve accident prevention courses for older drivers when they are provided by nonprofit corporations. The DSL Act requires the traffic safety bureau to license any "person, firm, association or corporation" including for-profit entities, it deems qualified to operate a driver education school or engage in the business of giving instruction for hire in the driving of motor vehicles. *Exemption from Driving School Licensing Act* (12/12/17), Att'y Gen. Adv. Ltr. 2017-07.

## 66-7-506.1. DWI prevention and education program; organ donation.

DWI prevention and education programs for instruction permits and driver's licenses shall include information on organ donation and the provisions of the Jonathan Spradling Revised Uniform Anatomical Gift Act [Chapter 24, Article 6B NMSA 1978].

**History:** Laws 2000, ch. 54, § 11; 2007, ch. 323, § 34.

**ANNOTATIONS**

**The 2007 amendment,** effective July 1, 2007, changed the name of the act.

## 66-7-507. Approval of accident-investigation programs; privacy of victims.

A. The bureau is authorized to conduct a study into the practices and procedures of accident-investigation units functioning in this state to determine whether such practices and procedures are aiding the citizens of this state in the discovery of the causes of motor vehicle accidents. If, at the conclusion of a study made of a particular unit, the bureau determines that the practices and procedures of such unit are of a beneficial nature, it shall designate the unit as an "approved accident-investigation unit" and shall send notice of this designation to such public agencies as it may determine.

B. Any unit designated as an approved accident-investigation unit shall receive, upon its request, assistance and data from any department, division, board, bureau, commission or other agency of the state, or of any political subdivision of the state, or any public or private hospital, which will enable the unit to carry out its investigation relating to accidents and accident causes. The privacy of accident victims shall be protected in any disclosure to the unit, by using the method of case numbers rather than identification by name.

**History:** 1953 Comp., § 64-7-507, enacted by Laws 1978, ch. 35, § 494.

**ANNOTATIONS**

**Cross references.** — For accident reports, *see* 66-7-207 NMSA 1978 et seq.

## 66-7-508. Confidentiality of records.

All records of an approved accident-investigation unit shall be confidential and shall not be available to any person other than a member or employee of the unit. A member or employee of the approved unit charged with the custody of the records and reports shall not be required to produce these records or reports or evidence of anything contained in them in any legal action or other proceedings.

**History:** 1953 Comp., § 64-33-8, enacted by Laws 1976 (S.S.), ch. 8, § 8; recompiled as 1953 Comp., § 64-7-508, by Laws 1978, ch. 35, § 495.

## 66-7-509. Annual reports.

An approved accident-investigation unit shall make an annual report to the bureau, the governor and the legislature not later than January 1 of the calendar year following such designation of approval, and this report shall contain the unit's findings and recommendations as to the formulation of effective methods and means to reduce motor vehicle accidents within New Mexico.

**History:** 1953 Comp., § 64-7-509, enacted by Laws 1978, ch. 35, § 496.

## 66-7-510. Bureau; information request.

The chief, with the approval of the director, may request all information pertinent to the traffic safety program of the bureau in the performance of its duties and functions, and this information shall be furnished by any officer, agent or employee of the state.

**History:** 1953 Comp., § 64-7-510, enacted by Laws 1978, ch. 35, § 497.

## 66-7-511. Acceptance of gifts; function of advisory committee.

A. The bureau, with the approval of the governor, may accept on behalf of the state any gift, grant or money given to the bureau for any and all purposes specified in the Traffic Safety Act. Any special grant shall be held by the state treasurer in a special fund and shall be expended in accordance with the terms of the gift or grant upon proper voucher and warrant drawn by the director of [or] his designated agent.

B. The advisory committee, upon the call of the chairman, shall convene and shall undertake the study and evaluation of all applications for federal grants pertaining to traffic safety programs or affairs. The advisory committee shall make its findings and

recommendations available to the chief in the form of minutes or written report. Whereupon the committee shall adjourn, awaiting the call of the chair.

**History:** 1953 Comp., § 64-7-511, enacted by Laws 1978, ch. 35, § 498.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not a part of the law.

**Each gift with different terms must have own separate fund.** — Prior to the acceptance of a gift to the New Mexico traffic safety commission (now traffic safety bureau) under Section 64-33-7, 1953 Comp. (similar to this section), the approval of the governor must be secured. Upon approval by the governor, the money should be deposited with the state treasurer. Each gift or grant which differs in its terms and conditions from any other must be set up in a separate fund. Although this may entail additional bookkeeping on the part of the state treasurer as well as the commission, this is the only method which will insure that every gift is expended in conformity with the conditions imposed upon it by the donor. Once the special fund or funds are set up by the state treasurer, these may be expended upon voucher of the director, processed in the usual manner. 1957 Op. Att'y Gen. No. 57-241.

## 66-7-512. Traffic safety education and enforcement fund created.

A. There is created in the state treasury the "traffic safety education and enforcement fund". The fund shall be invested in accordance with the provisions of Section 6-10-10 NMSA 1978 and all income earned on the fund shall be credited to the fund.

B. The traffic safety education and enforcement fund shall be used to institute and promote a statewide program of traffic safety through education and enforcement to reduce serious and fatal traffic accidents and to provide for the purchase of equipment and support services as are necessary to establish and maintain the program.

C. No less than fifty percent of the money deposited in the traffic safety education and enforcement fund shall be allocated to the law enforcement agency that issued the citation, provided the agency has submitted a traffic safety program plan that is approved by the traffic safety bureau of the state highway and transportation department. Law enforcement agencies shall use the money allocated from the fund to purchase equipment, including equipment for making fingerprint impressions of all persons arrested for or convicted of driving while under the influence of intoxicating liquor or drugs, and support services as are necessary to establish and maintain a traffic safety program.

D. No less than twenty percent of the money deposited in the traffic safety education and enforcement fund shall be allocated to institute and promote traffic safety education programs.

E. The balance of the money deposited in the traffic safety education and enforcement fund shall be allocated to existing traffic safety programs.

F. The traffic safety bureau of the state highway and transportation department shall adopt all rules, regulations and policies necessary to administer a statewide traffic program.

G. All money credited to the traffic safety education and enforcement fund shall be appropriated to the traffic safety bureau of the state highway and transportation department for the purpose of carrying out the provisions of this section and shall not revert to the general fund.

**History:** Laws 1990, ch. 57, § 1; 1997, ch. 242, § 4.

**ANNOTATIONS**

**Cross references.** — For penalty assessment fee in addition to the penalty assessment established for each penalty assessment misdemeanor, *see* 66-8-116.3 NMSA 1978.

For disposition of penalty assessment revenue, *see* 66-8-119 NMSA 1978.

**The 1997 amendment,** effective July 1, 1997, inserted "traffic safety education and enforcement" in Subsections C, D, and E, and inserted "including equipment for making fingerprint impressions of all persons arrested for or convicted of driving while under the influence of intoxicating liquor or drugs," in the second sentence in Subsection C.

## 66-7-513. Safe routes to school program.

A. The "safe routes to school program" is created within the department to increase and make safer a student's ability to walk or ride a bicycle to school.

B. The program may be established to:

(1) provide assistance to the state, counties and municipalities to identify school route hazards and implement engineering improvements, including:

(a) installing sidewalks;

(b) painting crosswalks and other street and sidewalk areas;

(c) installing traffic signals;

(d) making street improvements;

(e) providing lighting;

(f) providing bus shelters, particularly in isolated or rural areas;

(g) cutting curbs for access for persons with significant mobility limitation; and

(h) other safety improvements;

(2) develop criteria, in conjunction with the department's bicycle, pedestrian and equestrian committee, school districts and law enforcement agencies and with input from parents, teachers and school administrators, to be used in evaluating the applications of the program; and

(3) include information about the safe routes to school program in public awareness campaigns about traffic safety.

**History:** Laws 2003, ch. 148, § 2; 2007, ch. 319, § 63.

**ANNOTATIONS**

**The 2007 amendment,** effective June 15, 2007, changed "handicapped access" to "access for persons with significant mobility limitation".

# ARTICLE 8
# Crimes, Penalties and Procedure

# PART 1
# OFFENSES RELATING TO REGISTRATION

## 66-8-1. Fraudulent applications.

Any person who fraudulently uses a false or fictitious name in any application for the registration of a vehicle or a certificate of title, or knowingly makes a false statement, or knowingly conceals a material fact or otherwise commits a fraud in any such application shall upon conviction be punished by a fine of not more than one thousand dollars ($1,000) or by imprisonment for not more than one year or both.

**History:** 1953 Comp., § 64-8-1, enacted by Laws 1978, ch. 35, § 499.

**ANNOTATIONS**

**Provision's specific misdemeanor sentence controls Criminal Code misdemeanor sentence.** — Sections 30-1-6 and 31-19-1 NMSA 1978 refer generally to the sentence for misdemeanors; Section 64-10-1, 1953 Comp. (similar to this section), the statute which defendant violated, provides a specific sentence for that misdemeanor. If the general statute, standing alone, would include the same matter as the special statute and thus conflict with the special statute, the special statute controls since it is considered an exception to the general statute. *State v. Sawyers*, 1968-NMCA-051, 79 N.M. 557, 445 P.2d 978.

**"Not less than one year" portion of defendant's sentence is void** because it is in excess of the court's sentencing authority because Section 64-10-1, 1953 Comp. (similar to this section), does not provide for a minimum sentence. Sentences which are unauthorized by law are void. The "not more than one year" portion of the sentence is authorized by this section. *State v. Sawyers*, 1968-NMCA-051, 79 N.M. 557, 445 P.2d 978.

**State penitentiary proper place of confinement for violation.** — The place of confinement for misdemeanors under the Criminal Code is the county jail under Section 31-19-1 NMSA 1978. This section is not applicable because defendant violated Section 64-10-1, 1953 Comp. (similar to this section), which is not a Criminal Code misdemeanor; therefore, the proper place of his confinement is the state penitentiary. *State v. Sawyers*, 1968-NMCA-051, 79 N.M. 557, 445 P.2d 978.

**Violation to register vehicle under false or fictitious name.** — In the event a person, be he minor or adult, registered a motor vehicle under a false or fictitious name, he was in violation of this section's predecessor and may be prosecuted for that violation under said law. 1953 Op. Att'y Gen. No. 53-5654.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 93.

61A C.J.S. Motor Vehicles §§ 588, 594.

## 66-8-1.1. Fraud related to the issuance of documents by the department; penalties.

A. It is a felony for a department employee or private retail agent or other contractor of the department to:

(1) knowingly issue an identification card, driver's license, driving authorization card, vehicle or vessel registration or vehicle or vessel title to a person who is not lawfully entitled to issuance of that document;

(2) knowingly accept and use fraudulent documents as a basis for issuing an identification card, driver's license, driving authorization card, vehicle or vessel registration or vehicle or vessel title;

(3) knowingly alter a record of an identification card, driver's license, driving authorization card, vehicle or vessel registration or vehicle or vessel title without legal justification; or

(4) solicit or accept, directly or indirectly, anything of value with the intent to influence a decision or action on an identification card, a driver's license, a driving authorization card, a vehicle or vessel registration or a vehicle or vessel title.

B. A person convicted of violating this section is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

**History:** Laws 2007, ch. 319, § 65; 2016, ch. 79, § 14.

**ANNOTATIONS**

**The 2016 amendment,** effective May 18, 2016, established that existing criminal fraud penalties applicable to the issuance of a driver's license or identification card are extended to driving authorization cards; in the catchline, after "Fraud", deleted "in obtaining documents issued" and added "related to the issuance of documents", after "by the", deleted "division; penalty" and added "department; penalties"; in Subsection A, in the introductory sentence, after "It is a felony for a", deleted "person" and added "department employee or private retail agent or other contractor of the department", and in Paragraphs (1), (2), (3) and (4), after "driver's license", added "driving authorization card".

## 66-8-2. Improper use of evidences of registration.

No person shall lend to another any certificate of title, registration evidence, registration plate, special plate, validating sticker or permit issued to him if the person desiring to borrow the same would not be entitled to the use thereof, nor shall any person knowingly permit the use of any of the same by one not entitled thereto, nor shall any person display upon a vehicle any registration evidence, registration plate, validating sticker or permit not issued for such vehicle or not otherwise lawfully used thereon under the Motor Vehicle Code [66-1-1 NMSA 1978].

**History:** 1953 Comp., § 64-8-2, enacted by Laws 1978, ch. 35, § 500.

**ANNOTATIONS**

**Cross references.** — For the penalty for violation of any provision of the Motor Vehicle Code, *see* 66-8-7 NMSA 1978.

**New Mexico limits lawful use of dealer plates** to certain circumstances. Gross v. Pirtle, 245 F.3d 1151 (10th Cir. 2004)

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 94, 95.

## 66-8-3. False evidences of title and registration.

It is a felony for any person to commit any of the following acts:

A. to alter with fraudulent intent any certificate of title, registration evidence, registration plate, validating sticker or permit issued by the division;

B. to forge or counterfeit any such document or plate purporting to have been issued by the division;

C. to alter or falsify with fraudulent intent or to forge any assignment upon a certificate of title; or

D. to hold or use any such document or plate, knowing the same to have been so altered, forged or falsified.

**History:** 1953 Comp., § 64-8-3, enacted by Laws 1978, ch. 35, § 501.

**ANNOTATIONS**

**Cross references.** — For the penalty for violation of any provision of the Motor Vehicle Code, *see* 66-8-7 NMSA 1978.

**Jury instructions.** — There is a "knowing" requirement in subsection (D) of this section. The essential elements of the crime defined are that the accused knew that the registration plate held or used by him had been altered, forged or falsified with fraudulent intent. A jury instruction should require the jury to find that defendant knew the registration plate had been "so" altered or altered with fraudulent intent. *Ortiz v. State*, 1988-NMSC-008, 106 N.M. 695, 749 P.2d 80.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 60 C.J.S. Motor Vehicles § 101; 61A C.J.S. Motor Vehicles § 588.

## 66-8-3.1. Motor vehicle brokering; exceptions.

A. No person shall broker a motor vehicle unless:

(1) the manufacturer's certificate of origin has been surrendered to the appropriate registration authority prior to brokering;

(2) the person has an enforceable contractual right of delivery with the manufacturer of the vehicle or his representative; or

(3) the manufacturer's certificate of origin is or will be assigned to a person described in Paragraph (2) of this subsection as the result of the transaction.

B. The provision of Subsection A of this section shall not apply to a person holding a dealer's license on January 1, 1991 if:

(1) the ownership of the business for which the person holds the license remains the same as the ownership was on January 1, 1991;

(2) any change in ownership is the result of devise, bequest, intestate succession or a transfer between persons related within the fourth degree of consanguinity or affinity;

(3) any change in ownership is the result of a corporate or other business reorganization and at least fifty-one percent of the beneficial ownership or voting control remains in the same person; or

(4) after all stock transfers, fifty-one percent of the beneficial ownership or voting control remains in any person or persons owning stock on January 1, 1991.

C. For the purpose of this section, the change in ownership of any corporation shall be deemed a change in ownership of any subsidiary corporation pro rata to the extent of the ownership of the subsidiary.

D. Nothing in this section shall prohibit the activities of:

(1) receivers, trustees, administrators, executors, guardians or other persons appointed by or acting under judgment, decree or order or any court;

(2) public officers while performing their duties as such officers;

(3) persons making casual sales of their own vehicles;

(4) finance companies, banks and other lending institutions making sales of repossessed vehicles;

(5) licensed brokers under the Manufactured Housing Act [Chapter 60, Article 14 NMSA 1978] who, for a fee, commission or other valuable consideration, engage in brokerage activities related to the sale, exchange or lease purchase of pre-owned manufactured homes on a site installed for a consumer;

(6) persons who receive no compensation, profit or other valuable consideration as a result of the transaction; or

(7) persons providing advertising services through newspapers, magazines, television, radio or other advertising media if they are only disseminating an advertisement paid for by another.

E. For the purposes of this section, "broker" means selling, offering for sale, advertising for sale, negotiating or acting as agent in the sale of, or advertising to negotiate or act as agent in the sale of a motor vehicle.

**History:** Laws 1991, ch. 179, § 1.

**ANNOTATIONS**

**Severability clauses.** — Laws 1991, ch. 179, § 2 provided for the severability of the act if any part or application thereof is held invalid.

## 66-8-4. Authority of division to suspend or revoke a registration.

The division may suspend or revoke the registration of a vehicle or a certificate of title, registration evidence, or registration plate or any nonresident permit or other permit in any of the following events:

A. when the division is satisfied that such registration or that such certificate, card, plate or permit was fraudulently or erroneously issued;

B. when the division determines that a registered vehicle is mechanically unfit or unsafe to be operated or moved upon the highways;

C. when a registered vehicle has been dismantled or wrecked;

D. when the division determines that the required fee has not been paid and the same is not paid upon reasonable notice and demand;

E. when a registration evidence, registration plate, or permit is knowingly displayed upon a vehicle other than the one for which issued;

F. when the division determines that the owner has committed any offense under the Motor Vehicle Code [66-1-1 NMSA 1978] involving the registration, or the certificate, registration evidence, plate or permit; or

G. when the division is so authorized under any other provision of law.

**History:** 1953 Comp., § 64-8-4, enacted by Laws 1978, ch. 35, § 502.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 90.

What amounts to reckless driving of motor vehicle within statute making such a criminal offense, 52 A.L.R.2d 1337.

60 C.J.S. Motor Vehicles §§ 129, 130.

## 66-8-5. Suspending or revoking certificate or special plates of a manufacturer, dealer or auto recycler.

The division may suspend or revoke a certificate or the special plate issued to a manufacturer, dealer or auto recycler upon determining that the person is not lawfully entitled thereto or has made or knowingly permitted any illegal use of such plate or has committed fraud in the registration of vehicles.

**History:** 1953 Comp., § 64-8-5, enacted by Laws 1978, ch. 35, § 503; 2005, ch. 324, § 20.

**ANNOTATIONS**

**Cross references.** — For special plates, *see* 66-3-401 NMSA 1978 et seq.

**The 2005 amendment,** effective January 1, 2006, changed "wrecker of vehicles" to "auto recycler".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 60 Am. Jur. 2d Motor Vehicles §§ 129 to 134.

## 66-8-6. Owner to return evidences of registration upon cancellation, suspension or revocation.

Whenever the division cancels, suspends or revokes the registration of a vehicle, or a certificate of title, registration evidence, or registration plate, or any nonresident permit or other permit, or the license of any dealer or wrecker, the owner or person in possession of the same shall immediately return all evidences of registration, title or license so cancelled, suspended or revoked to the division.

**History:** 1953 Comp., § 64-8-6, enacted by Laws 1978, ch. 35, § 504.

## 66-8-7. Penalty for misdemeanor.

A. It is a misdemeanor for any person to violate any provision of the Motor Vehicle Code [66-1-1 NMSA 1978] unless the violation is declared a felony.

B. Unless another penalty is specified in the Motor Vehicle Code, every person convicted of a misdemeanor for violation of any provision of the Motor Vehicle Code shall be punished by a fine of not more than three hundred dollars ($300) or by imprisonment for not more than ninety days or both.

**History:** 1953 Comp., § 64-8-7, enacted by Laws 1978, ch. 35, § 505; 1989, ch. 320, § 3.

## ANNOTATIONS

**Cross references.** — For the general sentence for a misdemeanor, *see* 30-1-6 NMSA 1978.

**The 1989 amendment,** effective July 1, 1989, in Subsection B, substituted "three hundred dollars ($300)" for "one hundred dollars ($100)".

**The court does not have jurisdiction to require a defendant,** as part of his sentence, to perform community service, write a letter of apology to the victim's family and pay restitution. *State v. Gallegos*, 2007-NMCA-112, 142 N.M. 447, 166 P.3d 1101, cert. denied, 2007-NMCERT-006, 142 N.M. 15, 162 P.3d 170.

**Illegal sentence.** — Sentence of 364 days for driving without a valid driver's license was illegal and void. *State v. Ingram*, 1998-NMCA-177, 126 N.M. 426, 970 P.2d 1151, cert. denied, 126 N.M. 533, 972 P.2d 352.

**Applicability of Section 31-18-13 NMSA 1978.** — Subsection B is governed by the provisions of Section 31-18-13D NMSA 1978. The violation is not declared to be a felony. Since it is not declared to be a felony and is not punishable by a specified sentence, Section 31-18-13D NMSA 1978 applies. *State v. Mendoza*, 1993-NMCA-027, 115 N.M. 772, 858 P.2d 860, cert. denied *sub nom., Jaramillo v. State*, 115 N.M. 359, 857 P.2d 481.

**Warrantless home arrest not merited.** — The minor offenses of careless driving and leaving the scene of an accident do not merit the extraordinary recourse of warrantless home arrest. *Howard v. Dickerson*, 34 F.3d 978 (10th Cir. 1994).

**Misdemeanor classification of violation not repugnant to provision's authorized imprisonment.** — Although as amended, Section 64-10-7, 1953 Comp. (similar to this section), classifies a violation of Section 64-10-1, 1953 Comp. (similar to Section 66-8-1 NMSA 1978), as a misdemeanor, this classification is not repugnant to the imprisonment authorized by Section 64-10-1, 1953 Comp. Section 64-10-7, 1953 Comp., as amended, recognizes that a penalty for a misdemeanor violation may be specified that differs from the general misdemeanor penalty. Rather than being repugnant, Section 64-10-7, 1953 Comp., as amended, is reconcilable with Section 64-10-1, 1953 Comp. The doctrine of repeal by implication is not applicable. *State v. Sawyers*, 1968-NMCA-051, 79 N.M. 557, 445 P.2d 978.

**Since imprisonment provision allowed exception to general misdemeanor sentence.** — By Section 64-10-7, 1953 Comp. (similar to this section), a person convicted of a misdemeanor for violation of the Motor Vehicle Code is to be punished by a fine of not more than $100, imprisonment for not more than 90 days or both, "unless another penalty is specified in the Motor Vehicle Code." The amendment thus recognized that other penalties may be specified. Section 64-10-1, 1953 Comp. (similar to Section 66-8-1 NMSA 1978), specifies such a penalty. It authorizes imprisonment for not more than one year. *State v. Sawyers*, 1968-NMCA-051, 79 N.M. 557, 445 P.2d 978.

**Legislative history of section.** State v. Barela, 1980-NMCA-092, 95 N.M. 349, 622 P.2d 254, *overruled on other grounds by State v. Yazzie*, 1993-NMCA-101, 116 N.M. 83, 860 P.2d 213.

**Injunction inappropriate penalty.** — When defendant was convicted of numerous violations of the Motor Vehicle Code and the court issued an injunction prohibiting defendant from operating his vehicle until he satisfied the licensing and registration requirements of the Motor Vehicle Code, the injunction exceeded the court's authority, since the legislature has not authorized courts to issue injunctions as an additional means of enforcing the code. *State v. Bailey*, 1994-NMCA-107, 118 N.M. 466, 882 P.2d 57, cert. denied, 118 N.M. 256, 880 P.2d 867.

**Administrative penalties not "another penalty".** — When Section 64-10-7, 1953 Comp. (similar to this section), speaks of "another penalty," it means another penalty for the criminal act. Such a penalty must be either a term of imprisonment or a fine payable into the current school fund. The administrative penalties of Section 64-3-14, 1953 Comp., (similar to Section 66-3-19 NMSA 1978), do not meet this test. 1961 Op. Att'y Gen. No. 61-72.

**Criminal penalties not exclusion of imposition of administrative penalties.** — The criminal penalties prescribed by Section 64-10-7, 1953 Comp. (similar to this section), do not exclude imposition of the administrative penalties prescribed by Section 64-3-14, 1953 Comp. (similar to Section 66-3-19 NMSA 1978). 1961 Op. Att'y Gen. No. 61-72.

**Motor vehicle misdemeanor may involve jury trial.** — Persons charged with offenses classified as misdemeanors under the Motor Vehicle Code may under Rule 6-602 demand a jury trial but are not afforded one as a matter of right. 1979 Op. Att'y Gen. No. 79-17.

**Magistrate may order restitution.** — The magistrate may, as part of its sentencing power, order a Criminal Code or Motor Vehicle Code violator to make restitution. 1979 Op. Att'y Gen. No. 79-18.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 61A C.J.S. Motor Vehicles § 594.

What constitutes "minor traffic infraction" excludable from calculation of defendant's criminal history under United States Sentencing Guidelines § 4A1.2(c)(2). 113 A.L.R. Fed 561.

## 66-8-8. Sunday actions.

Judicial proceedings under any provision of the Motor Vehicle Code [66-1-1 NMSA 1978] are valid when performed on Sunday, the same as on other days of the week.

**History:** 1953 Comp., § 64-8-8, enacted by Laws 1978, ch. 35, § 506.

## 66-8-9. Penalty for felony.

Any person convicted of violating any provision of the Motor Vehicle Code [66-1-1 NMSA 1978] declared a felony, and punishment is not specified, is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

**History:** Laws 1978, ch. 35, § 507; 1981, ch. 12, § 1.

**ANNOTATIONS**

**Legislative history of section.** *State v. Barela*, 1980-NMCA-092, 95 N.M. 349, 622 P.2d 254, *overruled on other grounds by State v. Yazzie*, 1993-NMCA-101, 116 N.M. 83, 860 P.2d 213.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 61A C.J.S. Motor Vehicles § 594.

## 66-8-10. Duplicate or replacement registration plate; citation; failure to comply.

Any motor vehicle owner who has been issued a citation for an illegible registration plate and who fails to comply with the terms of the citation requiring the acquisition of a duplicate or replacement plate within thirty days of the date of the citation is guilty of a misdemeanor.

**History:** 1953 Comp., § 64-8-10, enacted by Laws 1978, ch. 35, § 508.

**ANNOTATIONS**

**Cross references.** — For authority of officer to issue citation for illegible registration plate, *see* 66-3-17 NMSA 1978.

# PART 2
# TRAFFIC OFFENSES

## 66-8-101. Homicide by vehicle; great bodily harm by vehicle.

A. Homicide by vehicle is the killing of a human being in the unlawful operation of a motor vehicle.

B. Great bodily harm by vehicle is the injuring of a human being, to the extent defined in Section 30-1-12 NMSA 1978, in the unlawful operation of a motor vehicle.

C. A person who commits homicide by vehicle while under the influence of intoxicating liquor or while under the influence of any drug is guilty of a second degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

D. A person who commits homicide by vehicle while violating Section 66-8-113 NMSA 1978 is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978, provided that violation of speeding laws as set forth in the Motor Vehicle Code [Chapter 66, Articles 1 to 8 NMSA 1978] shall not per se be a basis for violation of Section 66-8-113 NMSA 1978.

E. A person who commits great bodily harm by vehicle while under the influence of intoxicating liquor, while under the influence of any drug or while violating Section 66-8-113 NMSA 1978 is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978, provided that violation of speeding laws as set forth in the Motor Vehicle Code shall not per se be a basis for violation of Section 66-8-113 NMSA 1978.

F. A person who commits homicide by vehicle or great bodily harm by vehicle while under the influence of intoxicating liquor or while under the influence of any drug, as provided in Subsection C or E of this section, and who has incurred a prior DWI conviction within ten years of the occurrence for which the person is being sentenced under this section shall have the person's basic sentence increased by four years for each prior DWI conviction.

G. For the purposes of this section, "prior DWI conviction" means:

(1) a prior conviction under Section 66-8-102 NMSA 1978; or

(2) a prior conviction in New Mexico or any other jurisdiction, territory or possession of the United States, including a tribal jurisdiction, when the criminal act is driving under the influence of alcohol or drugs.

H. A person who willfully operates a motor vehicle in violation of Subsection C of Section 30-22-1 NMSA 1978 and directly or indirectly causes the death of or great bodily harm to a human being is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

**History:** 1953 Comp., § 64-8-101, enacted by Laws 1978, ch. 35, § 509; 1981, ch. 370, § 1; 1983, ch. 76, § 1; 1989, ch. 226, § 1; 1991, ch. 114, § 1; 2004, ch. 42, § 2; 2016, ch. 16, § 1.

## ANNOTATIONS

**Cross references.** — For the penalty for a felony, *see* 66-8-9 NMSA 1978.

For uniform jury instructions to be used with 66-8-101 NMSA 1978, *see* 14-240 NMRA.

**The 2016 amendment,** effective July 1, 2016, increased the penalty for homicide by vehicle while under the influence of intoxicating liquor or drugs; in Subsection C, after "homicide by vehicle", deleted "or great bodily harm by vehicle", after "under the influence of any drug", deleted "or while violating Section 66-8-113 NMSA 1978", after "guilty of a", deleted "third" and added "second", and after "31-18-15 NMSA 1978", deleted "provided that violation of speeding laws as set forth in the Motor Vehicle Code shall not per se be a basis for violation of Section 66-8-113 NMSA 1978"; added new Subsections D and E and redesignated the succeeding subsections accordingly; and in Subsection F, after "Subsection C", added "or E", after "occurrence for which", deleted "he" and added "the person", and after "shall have", deleted "his" and added "the person's".

**The 2004 amendment,** effective March 2, 2004, amended Subsection D to increase the basic sentence from two to four years and amended Paragraph (2) of Subsection E to add: "including a tribal jurisdiction". The 2004 amendment also changed "great bodily injury" to "great bodily harm".

**The 1991 amendment,** effective July 1, 1991, added Subsections D and E and redesignated former Subsection D as Subsection F.

**The 1989 amendment,** effective June 16, 1989, added Subsection D.

## I. GENERAL CONSIDERATION.

**Constitutionality.** — Subsection D is not unconstitutionally ambiguous. *State v. House*, 2001-NMCA-011, 130 N.M. 418, 25 P.3d 257, cert. denied, 130 N.M. 167, 21 P.3d 36.

**Applicability of section.** — This section applies when the vehicular killing is while driving under the influence of intoxicating liquor, while driving under the influence of drugs or while driving recklessly. *State v. Montoya*, 1979-NMCA-002, 93 N.M. 346, 600 P.2d 292, cert. quashed, 92 N.M. 532, 591 P.2d 286.

**Negligence.** — Where the proof is sufficient to establish, beyond a reasonable doubt, that under the circumstances of the injury the conduct of the driver was so reckless, wanton, and willful, as to show an utter disregard for the safety of pedestrians, a conviction for manslaughter will be warranted; but an injury caused by mere negligence, not amounting to a reckless, willful and wanton disregard of consequences, cannot be made the basis of a criminal action. *State v. Harris*, 1937-NMSC-046, 41 N.M. 426, 70 P.2d 757.

**The charges of party to the crime of homicide by vehicle** and great bodily harm by a vehicle do not require physical control over a vehicle. *State v. Marquez*, 2010-NMCA-064, 148 N.M. 511, 238 P.3d 880, cert. quashed, 2010-NMCERT-006, 148 N.M. 582, 241 P.3d 180.

**Party to the crime of homicide by vehicle and great bodily harm by a vehicle.** — Where defendant and defendant's friend were drinking together in a bar; the friend became so intoxicated that the bar refused service; defendant and the friend were refused service at another bar; defendant bought a twelve-pack of beer and suggested that the friend drive them in the friend's vehicle so that they could continue to party; the friend's vehicle rear-ended a van that resulted in the death of two and great bodily injury of five occupants of the van; seven open beer cans were found in the friend's vehicle; the friend had a breath alcohol content of .19; and defendant stated that defendant knew the friend was intoxicated at the time of the accident, and that defendant should have taken the friend's keys away, although defendant did not have physical control over the friend's vehicle, defendant was guilty of homicide by a vehicle and of great bodily injury by a vehicle while driving a vehicle under the influence of alcohol. *State v. Marquez*, 2010-NMCA-064, 148 N.M. 511, 238 P.3d 880, cert. quashed, 2010-NMCERT-006, 148 N.M. 584, 241 P.3d 182.

**Injunction: inappropriate penalty.** — Application of the enhancement provision of Subsection D did not violate defendant's constitutional rights to equal protection and due process. *State v. House*, 2001-NMCA-011, 130 N.M. 418, 25 P.3d 257, cert. denied, 130 N.M. 167, 21 P.3d 36.

**Choice of statute for prosecution.** — Vehicular homicide is a lesser offense than child abuse resulting in death. The legislature did not intend to create separately punishable offenses under Section 30-6-1C and Section 66-8-101 NMSA 1978 for one death, The crime of vehicular homicide does not operate as an exception to the crime of child abuse resulting in death to the extent of compelling the State to prosecute under the vehicular homicide statute for cases involving the operation of a vehicle. *State v. Santillanes*, 2001-NMSC-018, 130 N.M. 464, 27 P.3d 456, *rev'g* 2000-NMCA-017, 128 N.M. 752, 998 P.2d 1203.

**Each homicide constitutes separate violation.** — The subject of punishment of vehicular homicide is the killing of another, not the unlawful operation of a motor vehicle; thus, each homicide constitutes a separate violation of this section. *State v. House*, 2001-NMCA-011, 130 N.M. 418, 25 P.3d 257, cert. denied, 130 N.M. 167, 21 P.3d 36.

**Involuntary manslaughter statute preempted.** — This section preempts the involuntary manslaughter statute, Section 30-2-3 NMSA 1978, in unintentional vehicular homicide cases. *State v. Yarborough*, 1995-NMCA-116, 120 N.M. 669, 905 P.2d 209, *aff'd*, 1996-NMSC-068, 122 N.M. 596, 930 P.2d 131.

**There is no such crime as homicide by vehicle by careless driving.** *State v. Yazzie*, 1993-NMCA-101, 116 N.M. 83, 860 P.2d 213, *overruled on other grounds by State v. Yarborough*, 1996-NMSC-068, 122 N.M. 596, 930 P.2d 131.

**"Operating" vs. "driving" motor vehicle.** – The legislature has made no distinction in this section as to whether "operating a motor vehicle" means to drive or be in actual physical control of the vehicle. *State v. Laney*, 2003-NMCA-144, 134 N.M. 648, 81 P.3d 591, cert. denied, 2003-NMCERT-003, 135 N.M. 51, 84 P.3d 668.

**"Operation of a motor vehicle".** — There was substantial evidence from which fact finder could determine that defendant, found underneath steering wheel immediately after accident, was driver of vehicle. *State v. Vigil*, 1985-NMCA-110, 103 N.M. 643, 711 P.2d 920, cert. denied, 103 N.M. 740, 713 P.2d 556 (1986).

**Criminal intent, a mental state of conscious wrongdoing, is a necessary element** of the crime for which defendant was convicted, (homicide by vehicle), and one which must be proven. *State v. Jordan*, 1972-NMCA-033, 83 N.M. 571, 494 P.2d 984.

**Driving under influence malum in se and evidence of intent.** — Criminal intent, a mental state of conscious wrongdoing, is a necessary element of homicide by vehicle and one which must be proven; however, voluntarily driving a vehicle while under the influence is an act malum in se and this action is substantial evidence of criminal intent. *State v. Myers*, 1975-NMCA-055, 88 N.M. 16, 536 P.2d 280; *State v. Dutchover*, 1973-NMCA-052, 85 N.M. 72, 509 P.2d 264.

**Rules concerning contributory negligence have no application to homicide cases.** *State v. Myers*, 1975-NMCA-055, 88 N.M. 16, 536 P.2d 280.

**Driving conduct immediately before mishap admissible to show no "accident".** — In a prosecution for homicide by vehicle by driving recklessly, evidence of driving conduct that occurred immediately before the mishap was admissible under Rule 404(b), N.M.R. Evid. (now Rule 11-404B), both to show defendant's mental state and also lack of accident. *State v. Sandoval*, 1975-NMCA-096, 88 N.M. 267, 539 P.2d 1029.

**Unborn viable fetus is not a human being** for purposes of vehicular homicide. The killing of a fetus, under the common law, was not homicide unless the fetus had been born alive; until born alive, there was no human being. *State v. Willis*, 1982-NMCA-151, 98 N.M. 771, 652 P.2d 1222.

**Mental state required for vehicular homicide (conscious wrongdoing)** requires only that a defendant purposefully engage in an unlawful act; a defendant need not know of

any risk involved in his actions. *State v. Ibn Omar-Muhammad*, 1985-NMSC-006, 102 N.M. 274, 694 P.2d 922.

**Instruction tracking statute did not shift burden to defendant.** — General principles of criminal law do not require that a defendant's conduct be the sole cause of the crime. Instead, it is only required that the result be proximately caused by, or the "natural and probable consequence of," the accused's conduct. Thus, as the causation instruction given in this case clearly states, the State has the burden of proving beyond a reasonable doubt that the defendant's actions caused the deaths and great bodily harm, in the sense that his unlawful acts, "in a natural and continuous chain of events," produced the deaths and the great bodily harm. This instruction does not instruct the jury to convict the defendant if he is at fault only to an insignificant extent. Accordingly, the vehicular homicide statute does not unconstitutionally shift the burden of proof and the trial court did not err in giving jury instructions that tracked the statute. *State v. Simpson*, 1993-NMSC-073, 116 N.M. 768, 867 P.2d 1150.

**Sufficient evidence of homicide by vehicle and great bodily harm by vehicle.** — Where defendant was charged with homicide by vehicle and great bodily harm by vehicle following a two-vehicle collision, and where defendant claimed that he was not the driver of the vehicle at the time of the accident, evidence presented at trial that defendant was observed with injuries on the left side of his body, which the state’s expert witness opined would be consistent with defendant being in the driver’s seat at the time of the accident, that DNA evidence was negative for another person on the driver’s side of the vehicle and negative for defendant on the passenger’s side of the vehicle, and that defendant made jailhouse statements implying that he was the driver, was sufficient to support defendant’s convictions. *State v. Hernandez*, 2017-NMCA-020, cert. denied.

**Corpus delicti of vehicular homicide may be proved by circumstantial evidence.** — Where defendant was charged with vehicular homicide, and where the state sought to establish the corpus delicti of vehicular homicide purely from circumstantial evidence and without any expert testimony, and where the state presented circumstantial evidence that defendant was not in the lawful operation of the vehicle, based on his admission that he was in the vehicle, that blood found on the driver’s side matched defendant’s DNA, and that defendant had a blood alcohol content of .06 and had methamphetamine in his system, along with evidence that the decedent was alive in the vehicle prior to the accident and was found by officers after the accident with visible signs of trauma, the district court erred in dismissing the charges based on its finding that an expert was required as a matter of law to prove cause of death, because the circumstantial evidence to be presented by the state was sufficient to establish the corpus delicti of vehicular homicide. *State v. Platero*, 2017-NMCA-083, cert. denied.

**Sufficient evidence of great bodily harm.** — Where defendant was convicted of causing great bodily injury by vehicle following a collision in which defendant’s vehicle, while traveling on a state road, crossed the center lane and struck a group of motorcyclists, there was sufficient evidence to support a finding of “prolonged

impairment” where the victim testified that she experienced severe bruising, road rash, and bruised ribs as a result of the collision, that the bruising and road rash covered her right side, that she was unable to work for approximately a month, that for the first two weeks, she was unable to move because of the extreme pain resulting from her bruised ribs and that she still experiences pain resulting from the bruised ribs. *State v. Cordova*, 2016-NMCA-019, cert. granted, 2015-NMCERT-008.

**Great bodily harm means harm to a human being other than the perpetrator.** — Where defendant was charged with, and convicted of, driving while intoxicated causing great bodily harm to a human being, where the great bodily injury resulting from his unlawful conduct was to himself and not to others, defendant’s conviction required reversal because 66-8-101 NMSA 1978 applies only when a driver while under the influence of an intoxicant has caused great bodily harm to another human being. *State v. Gray*, 2016-NMCA-095, cert. denied.

**Sentence enhancement for prior DWI convictions.** — Where defendant was convicted of driving while intoxicated causing great bodily harm, the trial court lacked statutory authority to enhance defendant’s sentence by sixteen years for prior DWI convictions occurring in 1987, 1996, 2006, and 2008, because the enhancement can be added only for those prior convictions occurring within ten years of the occurrence for which the person is being sentenced. *State v. Gray*, 2016-NMCA-095, cert. denied.

**Jury question as to type of homicide.** — In most cases, it is for the jury to determine whether the defendant acted with the subjective knowledge of great danger to the lives of others required to establish depraved mind murder or merely with the mental state of conscious wrongdoing (i.e., whether he purposefully did an act the law declares to be a crime) required to establish vehicular homicide. *State v. Omar-Muhammad*, 1987-NMSC-043, 105 N.M. 788, 737 P.2d 1165.

**Sentence for homicide by vehicle.** — Even though this section does not include the language "resulting in the death of a human being," the crime of homicide by vehicle is subject to the six-year sentence authorized by Section 31-18-15 A(4) NMSA 1978. *State v. Guerro*, 1999-NMCA-026, 126 N.M. 699, 974 P.2d 669, cert. denied, 126 N.M. 533, 972 P.2d 352; *State v. Santillanes*, 2000-NMCA-017, 128 N.M. 752, 998 P.2d 1203, cert. denied, 128 N.M. 689, 997 P.2d 821, *rev'd*, 2001-NMSC-018, 130 N.M. 464, 27 P.3d 456.

## II. DOUBLE JEOPARDY.

**Driving under influence not necessarily lesser included offense.** — A conviction or acquittal of a lesser offense necessarily included in a greater offense bars a subsequent prosecution for the greater offense. However, where the indictment against defendant was phrased in the alternative charging him with homicide by vehicle while violating either Section 66-8-102 NMSA 1978 or Section 64-22-3, 1953 Comp. (similar to Section 66-8-113 NMSA 1978), the prosecution was not barred by a conviction in municipal court for driving under the influence, since the lesser offense of driving while under the

influence of intoxicating liquor is not necessarily included in the greater offense of homicide by vehicle. *State v. Tanton*, 1975-NMSC-057, 88 N.M. 333, 540 P.2d 813.

Driving while under the influence of intoxicating liquor is not a lesser-included offense of homicide by vehicle because it is possible to commit homicide by vehicle without being intoxicated. *State v. Munoz*, 2004-NMCA-103, 136 N.M. 235, 96 P.3d 796.

**Reckless driving not necessarily lesser included offense.** — A conviction of reckless driving is not necessarily included in a conviction of vehicular homicide while driving under the influence. *State v. Wiberg*, 1988-NMCA-022, 107 N.M. 152, 754 P.2d 529, cert. denied, 107 N.M. 106, 753 P.2d 352.

**Merger with driving-while-intoxicated offense.** — A defendant's driving-while-intoxicated (DWI) offense merges with his vehicular homicide offense, and his sentence for the DWI conviction must be vacated. *State v. Santillanes*, 2000-NMCA-017, 128 N.M. 752, 998 P.2d 1203, *rev'd*, 2001-NMSC-018, 130 N.M. 464, 27 P.3d 456.

**Vehicular homicide and leaving the scene of an accident.** — Where defendant drove a pickup toward a group of children who were trick-or-treating on Halloween; the chaperone pushed the children out of the way but was struck and killed; defendant stopped and then left the scene of the accident; defendant was convicted of homicide by vehicle under 66-8-101 NMSA 1978 and knowingly leaving the scene of an accident involving great bodily harm or death under 66-7-201 NMSA 1978, defendant’s convictions did not violate defendant’s double jeopardy rights. *State v. Melendrez*, 2014-NMCA-062, cert. denied, 2014-NMCERT-006.

**Offense has no degrees thus driving under influence not included.** — Driving while under the influence of intoxicating liquor is not a lesser included offense of homicide by vehicle, since homicide by vehicle provision has no degrees, and since homicide by vehicle not only may be committed while driving under the influence of intoxicating liquor, but may also be committed by driving while under the influence of drugs or reckless driving. *State v. Trujillo*, 1973-NMCA-076, 85 N.M. 208, 510 P.2d 1079, questioned in *State v. Munoz*, 2004-NMCA-103, 136 N.M. 235, 96 P.3d 796.

**Convictions for two types of vehicular homicide prohibited.** — When the defendant was charged with two charges of vehicular homicide for each of three deaths based on driving while intoxicated and on resisting, evading or obstructing an officer, he could not be convicted of more than one type of homicide by vehicle and it was error to allow convictions on both of the alternative charges and to impose consecutive sentences therefor. *State v. Landgraf*, 1996-NMCA-024, 121 N.M. 445, 913 P.2d 252, cert. denied, 121 N.M. 375, 911 P.2d 883.

**Vehicular homicide and child abuse resulting in death.** — Conduct underlying both vehicular homicide and child abuse resulting in death charges was the same. Therefore, the defendant's convictions and sentences for both offenses violated his right to be free

from double jeopardy. *State v. Santillanes*, 2000-NMCA-017, 128 N.M. 752, 998 P.2d 1203, *rev'd*, 2001-NMSC-018, 130 N.M. 464, 27 P.3d 456.

**No double jeopardy when facts fail "same evidence" test.** — Where the facts offered in municipal court to support a conviction for driving while under the influence of intoxicating liquors would not necessarily sustain a conviction for homicide by vehicle in district court, under the "same evidence" test there was no double jeopardy when the state sought to prosecute the defendant for homicide by vehicle. *State v. Tanton*, 1975-NMSC-057, 88 N.M. 333, 540 P.2d 813.

**When double jeopardy not applicable.** — Where jurisdiction was lacking over an involuntary manslaughter alleged in a children's court proceeding, such allegation provides no basis for a double jeopardy claim in a subsequent prosecution. *State v. Montoya*, 1979-NMCA-002, 93 N.M. 346, 600 P.2d 292, cert. quashed, 92 N.M. 532, 591 P.2d 286.

**Offense beyond jurisdiction of the court.** — Where a defendant pleads guilty to the misdemeanor charges of driving while intoxicated and reckless driving in the magistrate court, he cannot then claim that a trial on the felony charge of homicide by vehicle while driving under the influence of intoxicating liquor in the district court is barred by the double jeopardy rule, because jeopardy cannot extend to an offense (i.e., homicide) beyond the jurisdiction of the magistrate court. *State v. Manzanares*, 1983-NMSC-102, 100 N.M. 621, 674 P.2d 511, cert. denied, 471 U.S. 1057, 105 S. Ct. 2123, 85 L. Ed. 2d 487, *rh'g denied*, 472 U.S. 1013, 105 S. Ct. 2715, 86 L. Ed. 2d 729 (1985); *State v. James*, 1979-NMSC-096, 93 N.M. 605, 603 P.2d 715.

**Retrial is continuing prosecution.** — Where the state initially brought charges of driving while intoxicated and vehicular homicide in one proceeding and the jury found the defendant guilty of driving while intoxicated but was unable to reach a verdict on the vehicular homicide count, the subsequent retrial of vehicular homicide did not subject the defendant to double jeopardy, as such an action could be characterized as a continuing prosecution of the vehicular homicide charge. *State v. O'Kelley*, 1991-NMCA-049, 113 N.M. 25, 822 P.2d 122, cert. quashed, 113 N.M. 24, 822 P.2d 121.

**Separate enhancements and consecutive terms.** — In a prosecution for homicide by vehicle and great bodily injury by vehicle, arising out of a single incident, the imposition of separate enhancements and consecutive terms for each count does not constitute double jeopardy. *State v. Telles*, 1999-NMCA-013, 126 N.M. 593, 973 P.2d 845.

**No merger with offense of injury to pregnant woman.** — The offense of vehicular homicide does not merge with the offense of injury to a pregnant woman because the two statutory offenses require proof of different facts. *State v. Begay*, 1987-NMCA-025, 105 N.M. 498, 734 P.2d 278.

**Causation.** — Where causation, the element that distinguishes driving under the influence from great bodily injury by vehicle, was sufficiently in dispute, a jury rationally

could have acquitted defendant of great bodily injury by vehicle and found defendant guilty of driving under the influence. *State v. Munoz*, 2004-NMCA-103, 136 N.M. 235, 96 P.3d 796.

## III. RECKLESS OR INTOXICATED.

**Substantial evidence of reckless driving while willfully disregarding the rights and safety of others.** — Where a motorist, who was attempting to merge into the right lane of the highway, reported that defendant passed the motorist on the right side at a high speed; the police stopped defendant; defendant admitted that defendant had been driving eighty miles per hour; the officers gave defendant a verbal warning, told defendant to slow down before defendant hurt someone, and told defendant to follow the forty-five mile per hour speed limit which would decrease to thirty-five miles per hour; approximately two minutes after the traffic stop and one to one and one-half miles from the traffic stop, defendant collided with a vehicle that was crossing the highway, killing the passenger; defendant was driving in the left lane and could have avoided the collision by steering left into the oncoming traffic lane; instead, defendant veered to the right toward the other vehicle; the driver of the other vehicle testified that defendant appeared to be laughing as defendant veered into the other vehicle; and defendant was driving between fifty-four and fifty-nine miles an hour in a thirty-five miles per hour speed zone, there was substantial evidence that defendant was driving recklessly when defendant willfully disregarded the rights and safety of others. *State v. Munoz*, 2014-NMCA-101.

**Sufficient evidence of reckless driving.** — Where defendant was charged with homicide by vehicle, great bodily harm by vehicle, and reckless driving following a two-vehicle collision, and where defendant claimed that he was not the driver of the vehicle at the time of the accident, evidence presented at trial that the vehicle in which defendant occupied slowly cut across all lanes of travel in a nearly horizontal direction, causing the vehicle to collide with another vehicle, and where the jury was free to reject defendant's version of the facts, was sufficient to conclude that the driver showed a willful or wanton disregard of the rights or safety of others and was therefore sufficient to support the recklessness element of defendant's convictions. *State v. Hernandez*, 2017-NMCA-020, cert. denied.

**Crossing yellow line to pass truck on incline is reckless.** — Where driver crossed a yellow no-passing line while attempting to pass a truck at the crest of an incline and he saw the lights of the approaching car of the deceased, and there was hesitation and doubt in his mind before he started to pass, and by his own testimony, had the truck not increased its speed there would have been only the possible chance of passing safely, the sum total constitutes substantial evidence of reckless disregard of the rights or safety of others. *State v. Tracy*, 1958-NMSC-043, 64 N.M. 55, 323 P.2d 1096.

**Overly excessive speed wanton and reckless disregard of other's rights.** — Where the evidence was undisputed that defendant drove 70 m.p.h. in a residential neighborhood, in a 25 to 35 m.p.h. zone, and on the wrong side of the highway, and

smashed into decedent's car and killed him, a jury would have a right to believe that the collision was not accidental, and that the defendant was driving in a careless manner and in wanton disregard of the rights or safety of others, or at a speed or in a manner so as to endanger any person, and the evidence was sufficient to submit to the jury homicide by vehicle while operating in a reckless manner. *State v. Richerson*, 1975-NMCA-027, 87 N.M. 437, 535 P.2d 644, cert. denied, 87 N.M. 450, 535 P.2d 657.

**Sufficient evidence to support a jury finding that defendant disregarded the rights and safety of others.** — Where defendant lost control of his vehicle as he was driving through Cloudcroft, New Mexico and struck an oncoming car causing serious injuries to the two passengers of the oncoming vehicle, and where defendant was charged and convicted of one count of great bodily harm by vehicle due to reckless driving, one count of driving on the wrong side of the road, and one count of speeding, and where defendant challenged the sufficiency of the evidence regarding recklessness, claiming that his only transgression was to drive too fast, which is insufficient to prove he acted in a reckless manner, there was sufficient evidence for a rational jury to find that defendant disregarded the rights and safety of others and drove in a reckless manner where the evidence established that defendant encountered numerous signs warning drivers of the danger of the road ahead, that the curvy road only had two lanes with no passing lane, and a mountain on one side of the road with a guardrail on the other to prevent vehicles from going over the drop-off, that it was dark outside, and that defendant disregarded these signs and conditions and accelerated to almost twice the speed limit. *State v. Doyal*, 2023-NMCA-015, cert. denied.

**No error in denying defendant’s requested jury instruction on speeding.** — Where defendant lost control of his vehicle as he was driving through Cloudcroft, New Mexico and struck an oncoming car causing serious injuries to the two passengers of the oncoming vehicle, and where defendant was charged with one count of great bodily harm by vehicle due to reckless driving, one count of driving on the wrong side of the road, and one count of speeding, and where, at trial, defendant requested a jury instruction that informed the jury that speeding alone is insufficient to constitute recklessness, the trial court did not err in denying defendant’s requested instruction, because the court instructed the jury that to find that defendant operated a motor vehicle in a reckless manner, it must find that defendant drove with a willful disregard of the safety of others and at a speed likely to endanger any person. The two elements in the instruction made it clear to the jury that something besides speeding was required to convict the defendant. *State v. Doyal*, 2023-NMCA-015, cert. denied.

**No error in denying defendant’s requested jury instruction on conscious wrongdoing.** — Where defendant lost control of his vehicle as he was driving through Cloudcroft, New Mexico and struck an oncoming car causing serious injuries to the two passengers of the oncoming vehicle, and where defendant was charged with one count of great bodily harm by vehicle due to reckless driving, one count of driving on the wrong side of the road, and one count of speeding, and where, at trial, defendant requested a jury instruction that modified UJI 14-241 NMRA, contending that UJI 14-241 failed to present to the jury the element of "conscious wrongdoing" as required by case

law, the district court did not err in denying defendant's requested instruction, because UJI 14-241 required the state to prove a state of mind beyond civil negligence, one where defendant acted with a conscious disregard of the safety of others and that the state must prove beyond a reasonable doubt that defendant acted intentionally when he committed the crime. Considered together, the two instructions fairly and accurately presented the law. *State v. Doyal*, 2023-NMCA-015, cert. denied.

**Mildly excessive speed while "showing off".** — Evidence that at the precise time of the accident defendant was traveling at 45 m.p.h. in a 30 m.p.h. zone on a heavily traveled main street, that the decedent's vehicle drove out onto the main street after stopping at a stop sign, and that defendant revved up his engine, slammed on his brakes, left 74 feet of skid marks and hit the decedent's vehicle broadside, along with abundant evidence from many witnesses that during the hours and minutes immediately preceding the accident, defendant was engaged in showing off a "hot-rod" type vehicle (driving up and down the street at high speeds, switching in and out of lanes, straddling lanes, turning corners very rapidly and making illegal U-turns, in addition to alternately revving up and slowing down the engine and attempting to "leave rubber" when he passed young members of the opposite sex walking along the street, and drinking) showed, without doubt, that defendant was operating his vehicle carelessly and heedlessly in willful and wanton disregard of the rights and safety of others, and without due caution and circumspection and in a manner so as to be likely to endanger persons and property, and was sufficient to sustain the conviction for homicide by vehicle while driving recklessly. *State v. Sandoval*, 1975-NMCA-096, 88 N.M. 267, 539 P.2d 1029.

**Ordinary recklessness is sufficient for conviction** of vehicular homicide and is shown by a total disregard for the safety of others. *State v. Ibn Omar-Muhammad*, 1985-NMSC-006, 102 N.M. 274, 694 P.2d 922.

**Defendant's actions reasonably found to be reckless.** — The jury could reasonably find that the defendant had operated a motor vehicle in a reckless manner that endangered another person by driving after drinking alcohol, deciding to lean over in the dark to get his cell phone, and driving onto the shoulder of the road. *State v. Wildgrube*, 2003-NMCA-108, 134 N.M. 262, 75 P.3d 862, cert. denied, 134 N.M. 179, 74 P.3d 1071.

**Hierarchy of vehicular homicide offenses.** — Because the legislature made clear its intent to impose a greater penalty for DWI-related violations of this section, when committed by a recidivist-impaired driver, than for reckless-driving-related violations, regardless of the driving history of the defendant, DWI-related violations must be viewed as the graver or more serious offense. *State v. House*, 2001-NMCA-011, 130 N.M. 418, 25 P.3d 257, cert. denied, 130 N.M. 167, 21 P.3d 36.

**Blood-alcohol content of other driver, passenger not relevant.** — In trial of driver for vehicular homicide and great bodily injury by vehicle while under the influence, the trial court did not err in excluding evidence of the blood-alcohol concentration of the driver of the struck motorcycle, which was below the legal limit for intoxication, and that

of the motorcycle's passenger, since neither fact was relevant to the case. *State v. Telles*, 1999-NMCA-013, 126 N.M. 593, 973 P.2d 845.

**Vehicular homicide by reckless conduct is lesser included offense** of depraved mind murder by vehicle. *State v. Ibn Omar-Muhammad*, 1985-NMSC-006, 102 N.M. 274, 694 P.2d 922.

**Instructing as lesser included offense of murder.** — District court, in instructing on murder, committed reversible error in refusing to instruct the jury on the lesser included offense of vehicular homicide, where the evidence of the defendant's use of marijuana the night before the morning of the killing could have supported a conviction of vehicular homicide while under the influence of drugs. *State v. Omar-Muhammad*, 1987-NMSC-043, 105 N.M. 788, 737 P.2d 1165.

**No implied acquittal of greater offense.** — Where the state brought charges of vehicular homicide and driving while intoxicated as separate counts, as opposed to lesser-included offenses, the jury's conviction of the defendant for driving while intoxicated but inability to reach a verdict on vehicular homicide was not an implied acquittal of vehicular homicide. An implied acquittal generally occurs when the jury is instructed to choose between a greater and a lesser offense, and chooses the lesser. *State v. O'Kelley*, 1991-NMCA-049, 113 N.M. 25, 822 P.2d 122, cert. quashed, 113 N.M. 24, 822 P.2d 121.

**No "crime-conviction" sequence requirement under Subsection D.** — Sentencing of repeat DWI offenders under Subsection D, unlike habitual offender sentencing under New Mexico criminal law, does not require that the commission of each prior offense used for enhancement occur after the conviction for the previous offense. *State v. Telles*, 1999-NMCA-013, 126 N.M. 593, 973 P.2d 845.

**Sufficient evidence of homicide and great bodily harm by vehicle.** — Where defendant was charged with homicide by vehicle (driving while under the influence of drugs), causing great bodily injury (driving while under the influence of drugs), possession of drug paraphernalia, and possession of marijuana, following a car collision in which defendant was the driver and where defendant's passenger was killed and the driver of another vehicle was severely injured, and where a test of defendant's blood revealed the presence of THC, the principle psychoactive constituent of marijuana, there was sufficient evidence to permit a reasonable jury to conclude beyond a reasonable doubt that defendant committed the crime of homicide and great bodily harm by vehicle where the state's expert witness testified that the drugs in defendant's system impaired his ability to drive safely, where another witness observed defendant's vehicle weave onto the shoulder and into the opposite lane of traffic even before the collision occurred, where investigators found no evidence that defendant either braked or swerved to avoid an obstacle in the road, and where drugs and drug paraphernalia were found in defendant's vehicle. *State v. Martinez*, 2020-NMCA-043, cert. denied.

**Sufficient evidence of vehicular homicide.** — Where defendant was charged with aggravated DWI and vehicular homicide after he crashed his truck, while drunk, into the victim as the victim was attempting to cross the street in a motorized wheelchair, and where the victim was hospitalized for approximately two weeks, but later died when the victim's family decided to remove him from life support, and where defendant claimed that the evidence demonstrated that the victim's own negligence in attempting to cross the street caused the collision, and the subsequent decision to remove the victim from life support relieved defendant of liability for the victim's death, there was sufficient evidence to support defendant's conviction where the state presented testimony from a witness who was driving behind defendant, that she observed defendant swerving and driving at inconsistent speeds, that she saw the victim begin to cross the street, that she recognized that it was dangerous for the victim to cross the street when defendant was driving so erratically, that she screamed out her window and honked her car horn repeatedly, and that defendant did not change his speed, apply his brakes, or take any other action to avoid colliding with the victim. Based on the witness's testimony regarding everything she did to warn of the danger she perceived, it was reasonable for the jury to conclude that defendant had enough time to avoid the collision and could have avoided the collision had he not been drunk. Moreover, the state presented expert witness testimony describing the victim's severe injuries caused by the impact from defendant's truck, and expert testimony that blunt trauma from being struck by a vehicle was the cause of the victim's death. *State v. Garcia*, 2022-NMCA-008, cert. denied.

**Blood alcohol percentage material to state's conviction.** — Where the state's conviction for vehicular homicide is based primarily upon defendant's driving under the influence of intoxicating liquor, his blood alcohol percentage is clearly material to his guilt or innocence. *State v. Lovato*, 1980-NMCA-126, 94 N.M. 780, 617 P.2d 169.

**Admission of blood test results found not to be error.** *State v. Sanchez*, 1982-NMCA-155, 98 N.M. 781, 652 P.2d 1232.

**Evidence supported finding that defendant was under the influence** at time of accident. *State v. Copeland*, 1986-NMCA-083, 105 N.M. 27, 727 P.2d 1342, cert. denied, 104 N.M. 702, 726 P.2d 856.

**Admissions of the defendant.** — Evidence was sufficient to support a finding of impairment or intoxication where the defendant admitted that he had consumed approximately sixteen ounces of wine and two additional alcoholic drinks the evening of the incident, that he had not eaten anything during the time he drank the alcohol, and the State presented evidence that the defendant consumed the alcohol in a two-hour period. *State v. Wildgrube*, 2003-NMCA-108, 134 N.M. 262, 75 P.3d 862, cert. denied, 134 N.M. 179, 74 P.3d 1071.

**Evidence that defendant had been drinking alcohol before driving is relevant to jury's consideration of defendant's recklessness.** *State v. Wildgrube*, 2003-NMCA-108, 134 N.M. 262, 75 P.3d 862, cert. denied, 134 N.M. 179, 74 P.3d 1071.

**State proved the corpus delicti of vehicular homicide with sufficient evidence apart from defendant's admissions.** — Where defendant was charged with homicide by vehicle after being involved in a car crash while intoxicated, and where defendant admitted to being the driver of the vehicle at the time of the accident, defendant's argument that the state failed to prove the corpus delicti of the charged offense was without merit, because under the corpus delicti rule, a defendant's extrajudicial statements may be used to establish the corpus delicti when the prosecution is able to demonstrate the trustworthiness of the confession and introduce some independent evidence of a criminal act, and in this case, the corpus delicti of vehicular homicide was established because other evidence showing that defendant was the driver of the vehicle corroborated the trustworthiness of defendant's confession and independently showed that defendant's passenger died from a criminal act. *State v. Bregar*, 2017-NMCA-028, cert. denied.

**Violation while reckless and DWI was serious violent offense.** — Where defendant's truck, which defendant was driving recklessly at a high rate of speed, crossed the center line, struck a bicyclist, propelled the bicyclist through the air and into the bed of defendant's truck, and killed the bicyclist; defendant's blood alcohol level was .23 and .24; and defendant had an extensive history of alcohol abuse, the offense of vehicular homicide was a serious violent offense under Section 33-2-34 NMSA 1978. *State v. Solano*, 2009-NMCA-098, 146 N.M. 831, 251 P.3d 769, cert. denied, 2009-NMCERT-007, 147 N.M. 361, 223 P.3d 358.

**Violation while DWI.** — Not all vehicular homicides committed while DWI are serious violent offenses under Section 33-2-34 NMSA 1978. *State v. Worrick*, 2006-NMCA-035, 139 N.M. 247, 131 P.3d 97, cert. quashed, 2007-NMCERT-008, 142 N.M. 434, 166 P.3d 1088.

**Violation while DWI was a serious violent offense.** — Where defendant's vehicle collided head-on with the victim's vehicle; the victim died as a result of the collision; defendant's breath alcohol level was three times the presumption level of intoxication; although the victim's headlights were on, defendant claimed defendant did not see the victim because the victim's headlights were not on; and defendant admitted that defendant was too drunk to drive, defendant's offense of vehicular homicide was a serious violent offense under Section 33-2-34 NMSA 1978. *State v. Worrick*, 2006-NMCA-035, 139 N.M. 247, 131 P.3d 97, cert. quashed, 2007-NMCERT-008, 142 N.M. 434, 166 P.3d 1088.

**Violation can be "serious violent offense."** — The trial court could reasonably conclude that vehicular homicide was a serious violent offense for purposes of Section 33-2-34 NMSA 1978 where, in addition to other evidence, it considered information contained in the presentence report that the vehicular homicide was the fourth time that the defendant had been arrested for an alcohol-related driving offense and that he had two previous convictions for DWI. *State v. Wildgrube*, 2003-NMCA-108, 134 N.M. 262, 75 P.3d 862, cert. denied, 134 N.M. 179, 74 P.3d 1071.

**Law reviews.** — For comment, "Two-Tiered Test for Double Jeopardy Analysis in New Mexico," see 10 N.M.L. Rev. 195 (1979-80).

For annual survey of New Mexico law relating to criminal law, see 13 N.M.L. Rev. 323 (1983).

For note, "The New Mexico Supreme Court's 'Jurisdictional Exception' to the Bar on Double Jeopardy: State v. Manzanares," see 15 N.M.L. Rev. 537 (1985).

For article, "Unintentional Homicides Caused by Risk-Creating Conduct: Problems in Distinguishing Between Depraved Mind Murder, Second Degree Murder, Involuntary Manslaughter, and Noncriminal Homicide in New Mexico," 20 N.M.L. Rev. 55 (1990).

For note, "Criminal Law: Applying the General/Specific Statute Rule in New Mexico - *State v. Santillanes*," see 32 N.M.L. Rev. 313 (2002).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 324 to 344, 383 to 385.

What amounts to negligent homicide within meaning of statutes penalizing negligent homicide by operation of a motor vehicle, 20 A.L.R.3d 473.

Homicide by automobile as murder, 21 A.L.R.3d 116.

Single act affecting multiple victims as constituting multiple assaults or homicides, 8 A.L.R.4th 960.

Alcohol-related vehicular homicide: nature and elements of offense, 64 A.L.R.4th 166.

61A C.J.S. Motor Vehicles §§ 657 to 671.

## 66-8-101.1. Injury to pregnant woman by vehicle.

A. Injury to pregnant woman by vehicle is injury to a pregnant woman by a person other than the woman in the unlawful operation of a motor vehicle causing her to suffer a miscarriage or stillbirth as a result of that injury.

B. As used in this section:

(1) "miscarriage" means the interruption of the normal development of the fetus, other than by a live birth and which is not an induced abortion, resulting in the complete expulsion or extraction from a pregnant woman of a product of human conception; and

(2) "stillbirth" means the death of a fetus prior to the complete expulsion or extraction from its mother, irrespective of the duration of pregnancy and which is not an

induced abortion; and death is manifested by the fact that after the expulsion or extraction the fetus does not breathe spontaneously or show any other evidence of life such as heartbeat, pulsation of the umbilical cord or definite movement of voluntary muscles.

C. Any person who commits injury to pregnant woman by vehicle while under the influence of intoxicating liquor or while under the influence of any drug or while violating Section 66-8-113 NMSA 1978 is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978, provided that violation of speeding laws as set forth in the Motor Vehicle Code [66-1-1 NMSA 1978] shall not per se be a basis for violation of Section 66-8-113 NMSA 1978.

**History:** Laws 1985, ch. 239, § 2.

**ANNOTATIONS**

**Cross references.** — For injury to pregnant woman, *see* 30-3-7 NMSA 1978.

**No merger with offense of vehicular homicide.** — The offense of vehicular homicide does not merge with the offense of injury to a pregnant woman because the two statutory offenses require proof of different facts. *State v. Begay*, 1987-NMCA-025, 105 N.M. 498, 734 P.2d 278.

## 66-8-102. Driving under the influence of intoxicating liquor or drugs; aggravated driving under the influence of intoxicating liquor or drugs; penalties.

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 the person incapable of safely driving a vehicle to drive a vehicle within this state.

C. It is unlawful for:

(1) a person to drive a vehicle in this state if the person has an alcohol concentration of eight one hundredths or more in the person's blood or breath within three hours of driving the vehicle and the alcohol concentration results from alcohol consumed before or while driving the vehicle; or

(2) a person to drive a commercial motor vehicle in this state if the person has an alcohol concentration of four one hundredths or more in the person's blood or breath within three hours of driving the commercial motor vehicle and the alcohol concentration results from alcohol consumed before or while driving the vehicle.

D. Aggravated driving under the influence of intoxicating liquor or drugs consists of:

(1) driving a vehicle in this state with an alcohol concentration of sixteen one hundredths or more in the driver's blood or breath within three hours of driving the vehicle and the alcohol concentration results from alcohol consumed before or while driving the vehicle;

(2) causing 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

(3) refusing to submit to chemical testing, as provided for in the Implied Consent Act [66-8-105 to 66-8-112 NMSA 1978], and in the judgment of the court, based upon evidence of intoxication presented to the court, the driver was under the influence of intoxicating liquor or drugs.

E. A 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 shall be sentenced to not less than twenty-four hours of community service. In addition, the offender may be required to pay 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 L 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 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 or fails to comply with any other condition of probation, 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 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 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, an offender shall be sentenced to a jail term of not less than ninety-six consecutive hours, not less than 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 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, not less than ninety-six hours of community service and a fine of seven hundred fifty dollars ($750). In addition to those penalties, when an offender commits aggravated driving 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 community service, 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 conviction pursuant to this section, an offender is guilty of a fourth degree felony and, notwithstanding the provisions of Section 31-18-15 NMSA 1978, shall be sentenced to a term of imprisonment of eighteen months, six months of which shall not be suspended, deferred or taken under advisement.

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

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

J. Upon a seventh conviction pursuant to this section, an offender is guilty of a third degree felony and, notwithstanding the provisions of Section 31-18-15 NMSA 1978, shall be sentenced to a term of imprisonment of three years, two years of which shall not be suspended, deferred or taken under advisement.

K. Upon an eighth or subsequent conviction pursuant to this section, an offender is guilty of a second degree felony and, notwithstanding the provisions of Section 31-18-15 NMSA 1978, shall be sentenced to a term of imprisonment of twelve years, ten years of which shall not be suspended, deferred or taken under advisement.

L. 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 approved by the department of finance and administration 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.

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

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

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

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

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

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

N. Upon a felony conviction pursuant to this section, the corrections department shall provide substance abuse counseling and treatment to the offender in its custody. While the offender is on probation or parole under its supervision, the corrections department shall also provide substance abuse counseling and treatment to the offender or shall require the offender to obtain substance abuse counseling and treatment.

O. Upon a conviction pursuant to this section, an offender shall be required to obtain an ignition interlock license and have an ignition interlock device installed and operating on all motor vehicles driven by the offender, pursuant to rules adopted by the bureau. Unless determined by the bureau to be indigent, the offender shall pay all costs associated with having an ignition interlock device installed on the appropriate motor vehicles. The offender shall operate only those vehicles equipped with ignition interlock devices for:

(1) a period of one year, for a first offender;

(2) a period of two years, for a second conviction pursuant to this section;

(3) a period of three years, for a third conviction pursuant to this section; or

(4) the remainder of the offender's life, for a fourth or subsequent conviction pursuant to this section.

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

Q. An offender who obtains an ignition interlock license and installs an ignition interlock device prior to conviction shall be given credit at sentencing for the time period the ignition interlock device has been in use.

R. 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.

S. 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, when that ordinance or law is equivalent to New Mexico law for driving under the influence of intoxicating liquor or drugs, and prescribes penalties for driving 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.

T. In addition to any other fine or fee 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.

U. With respect to this section and notwithstanding any provision of law to the contrary, if an offender's sentence was suspended or deferred in whole or in part and the offender violates any condition of probation, the court may impose any sentence that the court could have originally imposed and credit shall not be given for time served by the offender on probation.

V. 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) "commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

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

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

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

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

**History:** 1941 Comp., § 68-2317, enacted by Laws 1953, ch. 139, § 54; 1953 Comp., § 64-22-2; Laws 1955, ch. 184, § 8; 1965, ch. 251, § 1; 1969, ch. 210, § 2; recompiled as 1953 Comp., § 64-8-102, by Laws 1978, ch. 35, § 510; 1979, ch. 71, § 7; 1981, ch. 370, § 2; 1982, ch. 102, § 1; 1983, ch. 76, § 2; 1985, ch. 178, § 2; 1987, ch. 97, § 3; 1988, ch. 56, § 8; 1993, ch. 66, § 7; 1997, ch. 43, § 1; 1997, ch. 205, § 1; 1999, ch. 61, § 1; 2002, ch. 82, § 1; 2003, ch. 51, § 10; 2003, ch. 90, § 3; 2003, ch. 164, § 10; 2004, ch. 42, § 1; 2005, ch. 241, § 5; 2005, ch. 269, § 5; 2007, ch. 321, § 10; 2007, ch. 322, § 1; 2008, ch. 72, § 3; 2010, ch. 29, § 1; 2016, ch. 16, § 2.

## ANNOTATIONS

**Cross references.** — For mandatory revocation of driver's license by the division, *see* 66-5-29 NMSA 1978.

For Ignition Interlock Licensing Act, *see* 66-5-501 NMSA 1978.

For violation being a felony if homicide committed, *see* 66-8-101 NMSA 1978.

For funding of local government corrections fund by penalty assessment fees, *see* 66-8-116 NMSA 1978 and 66-8-119 NMSA 1978.

For immediate appearance before magistrate for violation, *see* 66-8-122 NMSA 1978.

For the prohibition of operation of a motor vehicle while possessing liquor, *see* 66-8-138 to 66-8-140 NMSA 1978.

For crime laboratory fee, *see* 31-12-7 NMSA 1978.

For crime laboratory fund, *see* 31-12-9 NMSA 1978.

For court automation fund, *see* 34-9-10 NMSA 1978.

For the criminal jurisdiction of magistrate courts, *see* 35-3-4 NMSA 1978.

For court automation fee, *see* 35-6-1 NMSA 1978, 66-8-116.3 NMSA 1978, and 66-8-119 NMSA 1978.

For uniform jury instructions to be used with 66-8-102 NMSA 1978, *see* UJI 14-4501 to 14-4503 NMRA.

**The 2016 amendment,** effective July 1, 2016, increased penalties and mandatory periods of incarceration for eighth or subsequent offenses, and provided that an eighth or subsequent offense is a second degree felony; in Subsection E, in the fourth sentence, after "Subsection", deleted "K" and added "L"; in Subsection J, after "seventh", deleted "or subsequent"; added a new Subsection K and redesignated the succeeding subsections accordingly; and in Subsection O, after "rules adopted by the", deleted "traffic safety".

**The 2010 amendment,** effective July 1, 2010, in the catchline, deleted "Persons" and added "Driving"; after "aggravated driving", deleted "while"; and changed "penalty" to "penalties"; in Subsection D, in the introductory sentence, after "Aggravated driving", deleted "while" and after "drugs consists of", deleted "a person who"; in Subsection D(1), at the beginning of the sentence, changed "drives" to "driving"; after "in this state", deleted "and has an" and added "with an"; and after "or more in the", deleted "person's" and added "driver's"; in Subsection D(2), at the beginning of the sentence, deleted "has caused" and added "causing"; in Subsection D(3), at the beginning of the sentence, deleted "refused" and added "refusing", and after "presented to the court,", added "the driver"; in Subsection E, in the first sentence, deleted "person under"; in the fifth sentence, after "aggravated driving", deleted "while"; and in the seventh sentence, after "aggravated driving", deleted "while"; in Subsection N, in the first sentence, after "rules adopted by the", added "traffic safety", and in the second sentence, after "determined by the", deleted "sentencing court" and added "bureau"; added Subsection P; relettered succeeding subsections; and in Subsection R, after "law for driving", deleted "while" and after "penalties for driving", deleted "while".

**The 2008 amendment,** effective May 14, 2008, deleted former Paragraph (3) of Subsection T which defined "conviction" to mean an adjudication of guilt, but not including the imposition of a sentence.

**The 2007 amendment,** effective April 2, 2007, amended Subsection C to provide for chemical tests within three hours after driving a vehicle for the administration of a chemical test to determine alcohol concentration.

Laws 2007, ch. 321, § 10 and Laws 2007, ch. 322, § 1 both enacted amendments to 66-8-102 NMSA 1978. The section was set out as amended by Laws 2007, ch. 322, § 1. *See* 12-1-8 NMSA 1978.

**The 2005 amendment,** effective June 17, 2005, provided in Subsection E that upon a first conviction, an offender shall be sentenced to not less than twenty-four hours of community service and that in addition, the offender may be required to pay the specified fine; deleted the former provision in Subsection E that if an offender's sentence was suspended or deferred and the offender violates any condition of probation, the court may impose any sentence that it could have originally imposed and credit shall not be given for time served on probation; provided in Subsection F(2) that the sentence shall include not less that ninety-six hours of community service and that if an offender fails to complete any community service, the offender shall receive the specified minimum sentence; deleted former Subsection N, which provided that for a first conviction of aggravated driving while under the influence, the offender shall be required as a condition of probation to have an ignition interlock device installed for one year; deleted former Subsection O, which provided that for a first offense of driving while under the influence, the offender may be required as a condition of probation to have an ignition interlock device installed for one year; deleted former Subsection P, which provided that upon a subsequent conviction, as a condition of probation, the offender shall be required as a condition of probation to have an ignition interlock device installed for one year; added Subsection N to provide the periods of time for which an offender shall be required to have an ignition interlock device installed; added Subsection O to provide that a fourth and subsequent offender may apply to the district court for removal of the ignition interlock device requirement five years after conviction and the conditions under which a district court may remove the requirement; and added Subsection S to provide that if an offender violates any condition of probation, the court may impose any sentence the court could originally have imposed and credit shall not be given for time on probation.

Laws 2005, ch. 241, § 5 and Laws 2005, ch. 269, § 5 enacted almost identical amendments to 66-8-102 NMSA 1978. The section was set out as amended by Laws 2005, ch. 269, § 5. *See* 12-1-8 NMSA 1978.

**The 2004 amendment,** effective March 2, 2004, added Paragraph (2) of Subsection C making it unlawful for "a person who has an alcohol concentration of four one hundredths or more in his blood or breath to drive a commercial motor vehicle within this state", amended Subsection E to add to the grounds for a 48-hour imprisonment a failure to comply with any condition of probation and to add "Notwithstanding any provision of law to the contrary, if an offender's sentence was suspended or deferred in whole or in part, and the offender violates any condition of probation, the court may impose any sentence that the court could have originally imposed and credit shall not be given for time served by the offender on probation", amended Subsection G to limit the subsection to a fourth conviction and to change the jail term from not less than six months to eighteen months, six months of which shall not be suspended, deferred or taken under advisement, added new Subsections H, I, J, L and M, redesignated former Subsection H as Subsection K and provided for the approval of the department of finance and administration for the drug screening program, redesignated former Subsections I through O as Subsections N through T and amended redesignated Subsection T by adding a new Paragraph (2) defining "commercial motor vehicle".

**The 2003 amendment,** effective July 1, 2003, substituted "A person" for "Every person" at the beginning of Subsection E; and substituted "or of a tribe, where that ordinance or law" for "that" following "the United States" in Subsection M.

Section 66-8-102 NMSA 1978 was amended by Laws 2003, ch. 51, § 10, Laws 2003, ch. 90, § 3 and Laws 2003, ch. 164, § 10. The section was set out as amended by Laws 2003, ch. 164, § 10. *See* Section 12-1-8 NMSA 1978.

**The 2002 amendment,** effective January 1, 2003, rewrote Subsection I to require the installation of an ignition interlock device for first-time offenders; added Subsections J and K; and redesignated former Subsections J to M as present Subsections L to O.

**The 1999 amendment,** effective June 18, 1999, added Subsection I, redesignated former Subsections I through L as Subsections J through M, and made minor stylistic changes.

**The 1997 amendment,** effective June 20, 1997, inserted "to participate in and complete a screening program described in Subsection H of this section and" near the beginning of the third sentence in Subsection E; added the last sentence of Subsection H; inserted the language beginning "in New Mexico" and ending "liquor or drugs" in Subsection J; and made a minor stylistic change in Paragraph D(3).

**Duplicate amendments.** — Laws 1997, ch. 43, § 1 and Laws 1997, ch. 205, § 1 enacted identical amendments to this section. The section was set out as amended by Laws 1997, ch. 205, § 1. *See* 12-1-8 NMSA 1978.

**The 1993 amendment,** effective January 1, 1994, rewrote this section.

**The 1988 amendment,** effective July 1, 1988, redesignated part of Subsection E as present Subsection E(1) and added present Subsection E(2); substituted "third conviction" for "subsequent conviction" in present Subsection E(1); added Subsections H, I and J; and made minor stylistic changes.

**The 1987 amendment,** effective April 7, 1987, in Subsection D inserted "notwithstanding the provisions of Section 31-18-13 NMSA 1978" following "shall be punished" in the first sentence; in Subsection E inserted "notwithstanding the provisions of Section 31-18-13 NMSA 1987"; and made a minor change in language in Subsection D.

## I. GENERAL CONSIDERATION.

**Sixth amendment right to a jury trial was not violated.** — Where defendant was convicted by a jury in magistrate court of aggravated DWI, first offense, which carried a maximum sentence of incarceration of ninety days; defendant appealed to district court and filed a demand for a jury trial; the district court denied defendant’s request for a jury trial; and at a bench trial, the district court found defendant guilty of DWI, the district

court did not violate defendant's right to a jury trial under the sixth amendment of the United States Constitution or Article II, Section 12 of the New Mexico Constitution because the maximum period of imprisonment was less than six months and defendant could not overcome the presumption that the offense of DWI, first offense, was not a serious offense for purposes of the sixth amendment right to a jury trial. *State v. Cannon*, 2014-NMCA-058, cert. denied, 2014-NMCERT-006.

**Requiring interlock devices for driving while under the influence of drugs.** — Subsection N of Section 66-8-102 NMSA 1978, mandating installation of an interlock device, applies to drivers who are under the influence of either alcohol or drugs, or both. *State v. Valdez*, 2013-NMCA-016, 293 P.3d 909, cert. denied, 2012-NMCERT-012.

**Equal protection not violated.** — Subsection N of Section 66-8-102 NMSA 1978, mandating installation of an interlock device on vehicles driven by persons convicted of driving while intoxicated, does not violate the Equal Protection Clause of the United States and New Mexico constitutions as applied to DWI offenders whose impairment is not caused by alcohol, but by drugs. *State v. Valdez*, 2013-NMCA-016, 293 P.3d 909, cert. denied, 2012-NMCERT-012.

Where defendant pled guilty to a first time offense of driving while intoxicated; the results of blood tests showed the presence of prescription drugs, but no alcohol, in defendant's system; and the district court ordered defendant to install in defendant's vehicle an ignition interlock device, which detected only alcohol, not drugs, the district court's order did not violate equal protection. *State v. Valdez*, 2013-NMCA-016, 293 P.3d 909, cert. denied, 2012-NMCERT-012.

**The offense of DWI (first offense) is a petty misdemeanor** and is subject to a one-year statute of limitations. *State v. Trevizo*, 2011-NMCA-069, 150 N.M. 158, 257 P.3d 978.

**Definition of vehicle.** — A farm tractor with an attached mower is a "vehicle" under the DWI statute. *State v. Richardson*, 1992-NMCA-041, 113 N.M. 740, 832 P.2d 801, cert. denied, 113 N.M. 690, 831 P.2d 989.

**Offense does not require motion of vehicle.** — The offense of driving while intoxicated under this statute does not require motion of the vehicle; the offense is committed when a person under the influence drives or is in actual physical control of a motor vehicle or exercises control over or steers a vehicle being towed. *Boone v. State*, 1986-NMSC-100, 105 N.M. 223, 731 P.2d 366; holding limited by *State v. Sims*, 2010-NMSC-027, 148 N.M. 330, 236 P.3d 642.

**Vehicle on private property.** — The state may charge a person with DWI pursuant to this section, despite the fact that the defendant is found on private property in actual physical control of a non-moving vehicle. *State v. Johnson*, 2001-NMSC-001, 130 N.M. 6, 15 P.3d 1233; holding limited by *State v. Sims*, 2010-NMSC-027, 148 N.M. 330, 236 P.3d 642.

**More than one act amending section.** — Where three acts were enacted to amend Section 66-8-102 NMSA 1978 at the same session of the legislature, were signed by the governor on different dates, had different effective dates, and are irreconcilable, the last act signed by the governor is presumed to be the law pursuant to Section 12-1-8B NMSA 1978. *State v. Smith*, 2004-NMSC-032, 136 N.M. 372, 98 P.3d 1022.

Where three acts were enacted to amend Section 66-8-102 NMSA 1978 at the same session of the legislature, were signed by the governor on different dates, and had different effective dates, the language of the three enactments, in addition to their titles and purposes, indicated that the objective of the legislature was to make specific, independent improvements to the statute and permitted the three enactments to be construed harmoniously to give effect to each enactment. In the course of amending an existing law, if the legislature restates existing law to comply with N.M. Const. Art. IV, § 18, the courts are not obligated to read into that legislative act a repeal by implication of other legislation passed in the same session. *State v. Smith*, 2004-NMSC-032, 136 N.M. 372, 98 P.3d 1022.

**Application to driving an off-road vehicle while intoxicated.** — Section 66-8-102 NMSA 1978 governs the punishment of the offense of driving an off-road vehicle while intoxicated, not Section 66-3-1020 NMSA of the Off-Highway Motor Vehicle Act. *State v. Natoni*, 2012-NMCA-062, 280 P.3d 304, cert. denied, 2012-NMCERT-005.

Where defendant, who was driving an off-road vehicle on a public road while intoxicated, crashed into a telephone pole; a passenger in the off-road vehicle was injured in the collision; and defendant pled no contest to DWI under Section 66-3-101 NMSA 1978 of the Off-Highway Motor Vehicle Act, defendant's sentence was governed by Section 66-8-102 NMSA 1978, not by Section 66-3-1020 NMSA 1978 of the Off-Highway Motor Vehicle Act. *State v. Natoni*, 2012-NMCA-062, 280 P.3d 304, cert. denied, 2012-NMCERT-005.

**Constitutionality of Implied Consent Act.** — The Implied Consent Act is not rendered unconstitutional in the civil context just because a refusal to take a breath test under the Act may be used as an element of the criminal offense of aggravated driving while intoxicated (DWI). *Marez v. State Taxation & Revenue Dep't*, 1995-NMCA-030, 119 N.M. 598, 893 P.2d 494.

**Constitutionality of punishment for refusing to submit to a warrantless blood draw under the Implied Consent Act.** — The fourth amendment to the United States constitution does not support an enhanced criminal penalty based upon a defendant's refusal to consent to a blood test for the presence of drugs, and therefore 66-8-102(D)(3) NMSA 1978 is unconstitutional to the extent violation of it is predicated on refusal to consent to a blood draw to test for the presence of any drug in the defendant's blood. *State v. Storey*, 2018-NMCA-009, cert. denied.

Where defendant was charged with aggravated driving while under the influence of intoxicating drugs, and where defendant's DUI charge was aggravated based on his

refusal to consent to a warrantless blood test, defendant's conviction for aggravated DUI was reversed because the fourth amendment does not support an enhanced criminal penalty based upon a defendant's refusal to consent to a blood test for the presence of drugs, and therefore a driver cannot be criminally punished for his refusal to submit to a blood test after being arrested on suspicion of driving under the influence of intoxicating liquor or drugs. *State v. Storey*, 2018-NMCA-009, cert. denied.

**Prosecutor's comment on defendant's refusal to consent to a blood test did not violate the fourth amendment.** — Where defendant was charged with aggravated driving while under the influence of intoxicating liquor or drugs after being arrested on suspicion of driving under the influence of marijuana and refusing to submit to a warrantless blood draw, the prosecutor's commentary at trial on defendant's refusal to consent to a blood test did not violate his constitutional rights under the fourth amendment, because the refusal to submit is a physical act rather than a communication, and therefore not protected as a privileged communication, and a refusal reflects consciousness of guilt that is relevant and admissible. *State v. Storey*, 2018-NMCA-009, cert. denied.

**Standing to challenge constitutionality.** — Motorist whose license was revoked for refusal to take a breath-alcohol test lacked standing to challenge the constitutionality of Subsection D(3). *Marez v. State Taxation & Revenue Dep't*, 1995-NMCA-030, 119 N.M. 598, 893 P.2d 494.

**Due process issues.** — Aggravation of defendant's DWI conviction under this section for his refusal to submit to a chemical test when he was not advised of the criminal consequences of that refusal did not violate federal or state due process provisions. *State v. Kanikaynar*, 1997-NMCA-036, 123 N.M. 283, 939 P.2d 1091, cert. quashed, 124 N.M. 269, 949 P.2d 283; *Kanikaynar v. Sisneros*, 190 F.3d 1115 (10th Cir. 1999), cert. denied, 528 U.S. 1090, 120 S. Ct. 821, 145 L. Ed. 2d 691 (2000).

**Contentions of vagueness.** — Provision of this section subjecting defendant who refuses to submit to chemical testing to a mandatory jail sentence upon conviction of DWI is not unconstitutionally vague. *State v. Kanikaynar*, 1997-NMCA-036, 123 N.M. 283, 939 P.2d 1091, cert. quashed, 124 N.M. 269, 949 P.2d 283; *Kanikaynar v. Sisneros*, 190 F.3d 1115 (10th Cir. 1999), cert. denied, 528 U.S. 1090, 120 S. Ct. 821, 145 L. Ed. 2d 691 (2000).

**Contentions of mootness.** — Generally, an appellate court will not decide a case when it cannot grant the appellant any relief, except where the conviction has continuing collateral consequences, such as mandatory sentence increases for subsequent offenses, limitations on eligibility for certain types of employment, and voting restrictions. *State v. Lope*, 2015-NMCA-011, cert. denied, 2014-NMCERT-010.

Where defendant appealed her DWI conviction but had already completed serving her sentence, the state's claim that the appeal was moot was in error, because although a decision would not affect defendant's sentence for this conviction, it may have

continuing collateral consequences such as mandatory sentence increases for subsequent DWI convictions. *State v. Lope*, 2015-NMCA-011, cert. denied, 2014-NMCERT-010.

**Effect of 1993 amendment.** — The 1993 amendment, designating a fourth or subsequent DWI conviction as a fourth degree felony, did not alter the elements required to establish the offense of DWI and thus proof of prior convictions is not an element of felony DWI; the amendment did not change the nature of the offense, but rather increased the punishment for subsequent offenders by conferring fourth-degree felony status on fourth or subsequent DWI convictions. *State v. Anaya*, 1997-NMSC-010, 123 N.M. 14, 933 P.2d 223.

**English-language notice regarding administrative revocation of driver's license is compatible with due process** when it is personally delivered to a driver during the course of his arrest for driving under the influence. *Maso v. N.M. Taxation & Revenue Dep't*, 2004-NMCA-025, 135 N.M. 152, 85 P.3d 276, *aff'd*, 2004-NMSC-028, 136 N.M. 161, 96 P.3d 286.

**"Operating" vs. "driving" motor vehicle.** – The legislature has made no distinction in this section as to whether "operating a motor vehicle" means to drive or be in actual physical control of the vehicle. *State v. Laney*, 2003-NMCA-144, 134 N.M. 648, 81 P.3d 591, cert. denied, 2003-NMCERT-003, 135 N.M. 51, 84 P.3d 668.

**Offense does not require occurrence on highway.** — The prohibitive language of the statute does not require that the DWI incident actually occur on a highway. *State v. Richardson*, 1992-NMCA-041, 113 N.M. 740, 832 P.2d 801, cert. denied, 113 N.M. 690, 831 P.2d 989.

**Parking lot of commercial restaurant.** — Fact that police officer arrested defendant for driving in the parking lot of a commercial restaurant does not render the arrest or search and seizure unlawful. *United States v. Aguilar*, 301 F.Supp.2d 1263 (D.N.M. 2004).

**"Vehicle" includes moped.** — A "moped," as defined in Section 66-1-4.11F NMSA 1978 and regulated by Section 66-3-1101 NMSA 1978, is a "vehicle" for the purpose of the prohibition against driving while intoxicated under this section. *State v. Saiz*, 2001-NMCA-035, 130 N.M. 333, 24 P.3d 365, cert. denied, 130 N.M. 459, 26 P.3d 103.

**Violation of section not conclusive proof of negligence.** — A mere showing that decedent operated a motor vehicle negligently in violation of this section and 66-7-104 NMSA 1978 is not sufficient to warrant summary judgment as it does not conclusively establish that the decedent's negligence was a contributing proximate cause of the accident. *Sweenhart v. Co-Con, Inc.*, 1981-NMCA-031, 95 N.M. 773, 626 P.2d 310, cert. denied, 95 N.M. 669, 625 P.2d 1186.

## II. UNDER THE INFLUENCE.

**"Under the influence" defined.** — A person is under the influence of intoxicating liquor if as a result of drinking liquor the driver was less able to the slightest degree, either mentally or physically, or both, to exercise the clear judgment and steady hand necessary to handle a vehicle with safety to the driver and the public. *State v. Sanchez*, 2001-NMCA-109, 131 N.M. 355, 36 P.3d 446, cert. denied, 131 N.M. 382, 37 P.3d 99.

**The impaired-to-the-slightest-degree standard of proof** is the proper measure of the language "under the influence of intoxicating liquor" and gives the public fair and adequate notice of what constitutes a violation of the statute. *State v. Neal*, 2008-NMCA-008, 143 N.M. 341, 176 P.3d 330, cert. denied, 2008-NMCERT-001, 143 N.M. 397, 176 P.3d 1129.

**Meaning of "under the influence".** — This section makes a person guilty of driving while under the influence of intoxicating liquor if by virtue of having drunk intoxicating liquor he is to the slightest degree less able, either mentally or physically or both, to exercise the clear judgment and steady hand necessary to handle as powerful and dangerous a mechanism as a modern automobile with safety to himself and the public. *State v. Deming*, 1959-NMSC-074, 66 N.M. 175, 344 P.2d 481; State v. Sisneros, 1938-NMSC-049, 42 N.M. 500, 82 P.2d 274.

**Term "under the influence" has been interpreted to mean that** to the slightest degree defendant was less able, either mentally or physically or both, to exercise the clear judgment and steady hand necessary to handle an automobile with safety to himself and the public. *State v. Myers*, 1975-NMCA-055, 88 N.M. 16, 536 P.2d 280.

**"Under the influence" means that to slightest degree defendant was** less able, either mentally or physically, or both, to exercise the clear judgment and steady hand necessary to handle an automobile with safety to himself and the public. *State v. Dutchover*, 1973-NMCA-052, 85 N.M. 72, 509 P.2d 264.

## III. ACTUAL PHYSICAL CONTROL.

**Actual physical control.** — A DWI conviction that is based on actual physical control requires proof that the accused actually, not just potentially, exercised control over the vehicle, as well as proof of a general intent to drive, so as to pose a danger to the safety of the driver or the public. *State v. Sims*, 2010-NMSC-027, 148 N.M. 330, 236 P.3d 642, *rev'g* 2008-NMCA-017, 143 N.M. 400, 176 P.3d 1132 and limiting the holdings in *Boone v. State*, 1986-NMSC-100, 105 N.M. 223, 731 P.2d 366 and *State v. Johnson*, 2001-NMSC-001, 130 N.M. 6, 15 P.3d 1233.

Where a police officer found defendant passed out or asleep behind the wheel of defendant's vehicle located in a commercial parking lot; the keys were on the passenger seat of the vehicle; upon awakening defendant, the officer detected a strong odor of alcohol and observed that defendant had bloodshot, watery eyes; defendant admitted to drinking alcohol, failed field sobriety tests, and submitted to two breath tests, the results of which were 0.19 and 0.18, and no motion of the vehicle was asserted either before or

at the time the officer approached defendant, the evidence was insufficient to show that defendant was in actual physical control of the vehicle and the charges against defendant of driving while intoxicated should be dismissed. *State v. Sims*, 2010-NMSC-027, 148 N.M. 330, 236 P.3d 642, *rev'g* 2008-NMCA-017, 143 N.M. 400, 176 P.3d 1132 and limiting the holdings in *Boone v. State*, 1986-NMSC-100, 105 N.M. 223, 731 P.2d 366 and *State v. Johnson*, 2001-NMSC-001, 130 N.M. 6, 15 P.3d 1233.

Defendant was in actual physical control of his vehicle when he was discovered asleep or passed out at the wheel with the ignition key on the passenger seat. *State v. Sims*, 2008-NMCA-017, 143 N.M. 400, 176 P.3d 1132, *rev'd*, 2010-NMSC-027, 148 N.M. 330, 236 P.3d 642.

**Sufficient evidence of DWI based on actual physical control.** — In a prosecution for aggravated DWI, where there were no witnesses who personally observed defendant driving, there was sufficient evidence to support the conviction under the theory of actual physical control based on the evidence presented at trial establishing that the arresting officer reached defendant's vehicle about five minutes after receiving a dispatch call alerting him that there was a pickup truck stuck in the median that was trying to back into traffic, that the officer observed defendant in the driver's seat of the truck, which was stuck in the median on the interstate with the hazard lights on, that the key to the vehicle was in the ignition and in the "on" position, and that defendant expressed an intent to drive, stating that he was going to El Paso. *State v. Alvarez*, 2018-NMCA-006, cert. denied.

**No actual physical control.** — When a police officer encountered defendant, defendant was standing outside defendant's vehicle, which was parked with the hood open and the engine off; defendant said defendant had stopped because defendant had been told the lights were not working; defendant had slurred speech, was unsteady, and had the odor of alcohol; and defendant failed a field sobriety test, defendant was not in actual physical control of the vehicle at the time the officer encountered defendant. *State v. Reger*, 2010-NMCA-056, 148 N.M. 342, 236 P.3d 654.

**Actual physical control of inoperable vehicle.** — The operability of a vehicle is a factor to be considered by the jury in determining whether a defendant has the general intent to drive so as to endanger any person. *State v. Mailman*, 2010-NMSC-036, 148 N.M. 702, 242 P.3d 269.

Where a police officer observed a vehicle at a convenience store parked off by itself in the dark with the door open; defendant told the officer that the vehicle had broken down and asked the officer to call for a tow truck; although defendant stated that defendant had dropped the keys to the vehicle under the seat, the officer could not find the keys; the vehicle was an older vehicle that could be started sometimes without a key; and the officer tried to start the vehicle without a key, but the engine would not turn over, the evidence was insufficient as a matter of law to demonstrate that defendant had taken an overt step toward driving with a general intent to drive so as to endanger himself or the

public and defendant was not in actual physical control of the vehicle. *State v. Mailman*, 2010-NMSC-036, 148 N.M. 702, 242 P.3d 269.

**DWI based on an inference of past driving.** — Actual physical control is not necessary to prove DWI unless there are no witnesses to the vehicle's motion and insufficient circumstantial evidence to infer that the accused actually drove while intoxicated. Such evidence may include the accused's own admissions, the location of the vehicle next to the highway, or any other similar evidence that tends to prove that the accused drove while intoxicated. *State v. Mailman*, 2010-NMSC-036, 148 N.M. 702, 242 P.3d 269.

Where a police officer observed a vehicle at a convenience store parked off by itself in the dark with the door open; the officer observed an open can of beer on the console; defendant appeared to be confused and disoriented, smelled of alcohol, and had difficulty maintaining balance; defendant stated that defendant had consumed a six-pack of beer and had thrown all but one can out of the vehicle window along the highway as defendant drove to the convenience store; and defendant refused to perform a field sobriety test and to provide a breath sample, admitting that defendant was too drunk to pass the test, there was substantial evidence to support defendant's conviction for past DWI. *State v. Mailman*, 2010-NMSC-036, 148 N.M. 702, 242 P.3d 269.

Where police officers were called to investigate a report of domestic violence occurring in a van parked on a roadside; when the officers arrived, defendant was in the driver's seat of the van; the van was not running; the keys were not in the ignition; defendant exhibited signs of intoxication, failed a standard field sobriety test, and refused to submit to chemical testing; defendant admitted to drinking twenty-four ounces of beer about one hour earlier; and the state prosecuted defendant exclusively on the past impaired driving theory, the evidence was insufficient to prove that defendant operated a motor vehicle while impaired to the slightest degree. *State v. Cotton*, 2011-NMCA-096, 150 N.M. 583, 263 P.3d 925, cert. denied, 2011-NMCERT-008, 268 P.3d 513.

**Unconscious driver exercised actual physical control.** — A person who was discovered unconscious or asleep at the wheel of an automobile, whose engine was on, was deemed to be in actual physical control, and thus was driving a vehicle within the meaning of this section. *State v. Harrison*, 1992-NMCA-139, 115 N.M. 73, 846 P.2d 1082, cert. denied, 114 N.M. 720, 845 P.2d 814 (1993); *State v. Rivera*, 1997-NMCA-102, 124 N.M. 211, 947 P.2d 168; *State v. Grace*, 1999-NMCA-148, 128 N.M. 379, 993 P.2d 93, cert. denied, 128 N.M. 149, 990 P.2d 823.

**Defendant sleeping in vehicle with key in ignition.** — Evidence that defendant was found asleep at the wheel of his parked vehicle, without the motor running, but with the key in the ignition in the "on" position, was sufficient to establish that he was "driving" as that term is construed for purposes of "driving under the influence". *State v. Tafoya*, 1997-NMCA-083, 123 N.M. 665, 944 P.2d 894, abrogated *State v. Mailman*, 2010-NMSC-036, 148 N.M. 702, 242 P.3d 269.

## IV. DOUBLE JEOPARDY.

**Double jeopardy not applicable.** — Where the state initially brought charges of driving while intoxicated and vehicular homicide in one proceeding and the jury found the defendant guilty of driving while intoxicated but was unable to reach a verdict on the vehicular homicide count, the subsequent retrial of vehicular homicide did not subject the defendant to double jeopardy, as such an action could be characterized as a continuing prosecution of the vehicular homicide charge. *State v. O'Kelley*, 1991-NMCA-049, 113 N.M. 25, 822 P.2d 122, cert. quashed, 113 N.M. 24, 822 P.2d 121.

**Double jeopardy does not bar DWI prosecution after license revocation.** — An administrative driver's license revocation under the Implied Consent Act (Sections 66-8-105 to 66-8-112 NMSA 1978) does not constitute "punishment" for purposes of the Double Jeopardy Clause; thus, the state is not barred from prosecuting an individual for driving under the influence (DWI) even though the individual has been subjected to an administrative hearing for driver's license revocation based on the same offense. *State ex rel. Schwartz v. Kennedy*, 1995-NMSC-069, 120 N.M. 619, 904 P.2d 1044.

**No implied acquittal of greater offense.** — Where the state brought charges of vehicular homicide and driving while intoxicated as separate counts, as opposed to lesser-included offenses, the jury's conviction of the defendant for driving while intoxicated but inability to reach a verdict on vehicular homicide was not an implied acquittal of vehicular homicide. An implied acquittal generally occurs when the jury is instructed to choose between a greater and a lesser offense, and chooses the lesser. *State v. O'Kelley*, 1991-NMCA-049, 113 N.M. 25, 822 P.2d 122, cert. quashed, 113 N.M. 24, 822 P.2d 121.

**Reckless driving and driving under influence are distinct offenses.** — The crimes of reckless driving and driving while under the influence of intoxicating liquor are distinct offenses, provable by different evidence, and conviction of one would not bar prosecution for the other. *Rea v. Motors Ins. Corp.*, 1944-NMSC-002, 48 N.M. 9, 144 P.2d 676; *State v. Sisneros*, 1938-NMSC-049, 42 N.M. 500, 82 P.2d 274.

**Driving-while-intoxicated merges with vehicular homicide.** — A defendant's driving-while-intoxicated (DWI) offense merges with his vehicular homicide offense, and his sentence for the DWI conviction must be vacated. *State v. Wiberg*, 1988-NMCA-022, 107 N.M. 152, 754 P.2d 529, cert. denied, 107 N.M. 106, 753 P.2d 352; *State v. Santillanes*, 2000-NMCA-017, 128 N.M. 752, 998 P.2d 1203, *rev'd*, 2001-NMSC-018, 130 N.M. 464, 27 P.3d 456.

**Offense not necessarily lesser included offense in vehicular homicide.** — A conviction or acquittal of a lesser offense necessarily included in a greater offense bars a subsequent prosecution for the greater offense. However, where the indictment against defendant was phrased in the alternative charging him with homicide by vehicle while violating either this section or Section 64-22-3, 1953 Comp. (similar to Section 66-8-113 NMSA 1978), the prosecution was not barred by a conviction in municipal court

for driving under the influence since the lesser offense of driving while under the influence of intoxicating liquor is not necessarily included in the greater offense of homicide by vehicle. *State v. Tanton*, 1975-NMSC-057, 88 N.M. 333, 540 P.2d 813.

**Greater crime does not necessarily include lesser crime.** — Greater crime of aggravated DWI can be committed in such a manner that the lesser crime of DWI .08 is not committed. *State v. Collins*, 2005-NMCA-044, 137 N.M. 353, 110 P.3d 1090.

**Notice of lesser included offense constructively given.** — Where during the questioning of the state's first witness, the court asked the state to clarify whether the state's request for the jury instruction of DWI .08 was also a motion to amend the charges, and the state responded that it did seek to amend the charges and the court granted the state's request at that time, there is no need to amend a charging document to include a lesser included offense because notice of a lesser included offense is constructively given. *State v. Collins*, 2005-NMCA-044, 137 N.M. 353, 110 P.3d 1090.

**Lesser offense included in aggravated offense.** — Defendant could not commit per se aggravated DWI without also committing DWI. *State v. Notah-Hunter*, 2005-NMCA-074, 137 N.M. 597, 113 P.3d 867, cert. denied, 2005-NMCERT-006, 137 N.M. 766, 115 P.3d 229.

**No double jeopardy when facts fail "same evidence" test.** — Where the facts offered in municipal court to support a conviction for driving while under the influence of intoxicating liquors would not necessarily sustain a conviction for homicide by vehicle in district court, under the "same evidence" test there was no double jeopardy when the state sought to prosecute the defendant for homicide by vehicle. *State v. Tanton*, 1975-NMSC-057, 88 N.M. 333, 540 P.2d 813.

**Construction under general/specific statute rule.** — The legislature did not intend to limit prosecution for either or both child abuse and driving while under the influence; thus, the statute was not preempted under the general/specific statute rule. *State v. Castaneda*, 2001-NMCA-052, 130 N.M. 679, 30 P.3d 368.

## V. PROBABLE CAUSE.

**Misdemeanor arrest rule.** — A police officer may properly arrest an intoxicated driver standing outside his vehicle when the officer has not observed him driving. The misdemeanor arrest rule is satisfied where the officer may reasonably infer from the direct and circumstantial evidence that the driver is intoxicated and has recently been in actual physical control of the vehicle. *State v. Reger*, 2010-NMSC-056, 148 N.M. 342, 236 P.3d 654

**Misdemeanor arrest rule does not apply to DWI investigations.** — Where a shopping mall employee saw a person staggering around the mall parking lot attempting to unlock different vans; the person eventually unlocked the door to a van and drove away; the employee gave the police a description of the van and the van’s license plate

number; a police officer went to the van's registered owner's address and observed a van that matched the employee's description in the driveway; the van's engine was warm; the officer knocked at the front door of the residence; the officer observed defendant stagger past the doorway, strike defendant's head on the wall next to the door, and fall; defendant staggered to the door a second time, fell, and opened the door from a sitting position; defendant told the officer that defendant had been driving the van earlier; and defendant had a strong odor of alcohol in defendant's breath, slurred speech, blood-shot eyes, and was unsteady, defendant's arrest for DWI was valid. *City of Santa Fe v. Martinez*, 2010-NMSC-033, 148 N.M. 708, 242 P.3d 275.

An investigating officer need not observe the offense in order to make a warrantless arrest. Instead, the warrantless arrest of one suspected of committing DWI is valid when supported by both probable cause and exigent circumstances. *City of Santa Fe v. Martinez*, 2010-NMSC-033, 148 N.M. 708, 242 P.3d 275.

**Reasonable suspicion for traffic stop.** — Where a police officer was driving on a county road, the officer observed the defendant come to a stop at a "T" intersection between the county road and an access road; there were no other vehicles on the county road or the access road; as the officer passed through the intersection, the officer observed that the defendant did not have his turn signal engaged; after the officer passed the defendant, the officer never saw the turn signal on the defendant's vehicle engaged; the defendant turned onto the access road without engaging the turn signal; the officer stopped the defendant for turning without using a turn signal and determined that the defendant was intoxicated, the trial court properly denied the defendant's motion to suppress evidence obtained at the traffic stop, because the officer had a reasonable particularized suspicion that the defendant had violated Section 66-7-325 NMSA 1978, which justified the stop at its inception. *State v. Hubble*, 2009-NMSC-014, 146 N.M. 70, 206 P.3d 579.

**Reasonable suspicion supports a traffic stop when it is based on an officer's knowledge that the driver's license of the driver was suspended or revoked.** — Where a police officer made a traffic stop of defendant's vehicle based solely on his belief that defendant had a suspended driver's license, which was based on two prior encounters with defendant where defendant was driving with a revoked or suspended driver's license and having heard on the police radio three or four weeks earlier that defendant was arrested for driving with a suspended or revoked driver's license and DWI, the district court erred in granting defendant's motion to suppress, because the officer's stop of defendant was supported by a constitutionally sufficient reasonable suspicion that defendant was driving with a suspended or revoked driver's license. *State v. James*, 2017-NMCA-053, cert. denied.

**Probable cause.** — The smell of alcohol emanating from the defendant, the defendant's lack of balance, and the manner of the defendant's performance of field sobriety tests constituted sufficient circumstances to give the officer the requisite objectively reasonable belief that the defendant had been driving while intoxicated and to proceed with breath alcohol content tests, and constituted probable cause to arrest

the defendant. *State v. Granillo-Macias*, 2008-NMCA-021, 143 N.M. 455, 176 P.3d 1187, cert. denied, 2008-NMCERT-002, 143 N.M. 665, 180 P.3d 674.

**Reasonable suspicion raised by citizen-informant.** — Information from a citizen-informant may be relied on by an officer to raise a reasonable suspicion that a person is driving while intoxicated, justifying an investigatory stop. *State ex rel. Taxation & Revenue Dep't Motor Vehicle Div. v. Van Ruiten*, 1988-NMCA-059, 107 N.M. 536, 760 P.2d 1302, cert. denied, 107 N.M. 413, 759 P.2d 200.

**Valid investigatory detention.** — Where an officer received a dispatch that a caller had reported a "parked DWI in the parking lot" of a restaurant, described the subject vehicle, gave a partial license plate number for the vehicle, reported that a male subject who smelled of alcohol had entered the restaurant, passed out in the bathroom for a period of time, left the restaurant and then got into a dark blue vehicle, and then drove the vehicle from one parking space to another, almost striking several other vehicles in the parking lot, and where the officer, upon arriving on the scene minutes after receiving the dispatch call, found a vehicle matching the caller's description, the officer could reasonably infer that the car was the subject of the dispatch, and could reasonably suspect that the man described by the caller might be in the car and that he might have engaged in the criminal activity of driving while intoxicated; an investigatory detention and seizure of the car and its occupants was justified because the information provided by dispatch and the officer's own corroborating observation identifying the subject car would lead a person of reasonable caution to suspect criminal activity involving the car and its occupants. *State v. Simpson*, 2016-NMCA-070, cert. denied.

**Officer's conduct in opening the door of a vehicle did not transform a lawful investigatory detention into a search requiring a warrant.** — Where an officer received a dispatch that a caller had reported a "parked DWI in the parking lot" of a restaurant, described the subject vehicle, gave a partial license plate number for the vehicle, reported that a male subject who smelled of alcohol had entered the restaurant, passed out in the bathroom for a period of time, left the restaurant and then got into a dark blue vehicle, and then drove the vehicle from one parking space to another, almost striking several other vehicles in the parking lot, and where the officer, upon arriving on the scene minutes after receiving the dispatch call, found a matching vehicle, with very dark tinted windows preventing the officer from seeing inside the vehicle to determine what the occupants were doing, an investigatory detention and seizure of the car and its occupants was justified, and the officer's conduct in opening the door did not transform a lawful investigatory detention into a search requiring a warrant, because it was the safest way to make contact with the car's occupants, and under the circumstances, it was reasonable for the officer to open the car door, enabling the officer to see both occupants and remain outside while conducting his investigation. *State v. Simpson*, 2016-NMCA-070, cert. denied.

**DWI test predicated on careless driving stop in parking lot valid.** — Although careless driving cannot be committed in a parking lot, police officer who witnessed defendant driving at an excessive speed in a crowded parking lot had reasonable,

although mistaken, suspicion to stop defendant, and such stop could be the predicate for a DWI test. *State v. Brennan*, 1998-NMCA-176, 126 N.M. 389, 970 P.2d 161, cert. denied, 126 N.M. 532, 972 P.2d 351.

## VI. PROCEDURE.

**Sufficiency of complaint.** — A criminal complaint for driving under the influence of intoxicating liquor requires a more specific description of the offense than simply "DWI" because those initials standing alone could mean driving either while under the influence of alcohol or while under the influence of drugs. *State v. Raley*, 1974-NMCA-024, 86 N.M. 190, 521 P.2d 1031, cert. denied, 86 N.M. 189, 521 P.2d 1030.

**Defense of duress.** — There is no requirement that a defendant admit to impairment in order to assert duress as a defense to a DWI charge. *State v. Tom*, 2010-NMCA-062, 148 N.M. 348, 236 P.3d 660.

**Duress does not negate an essential element of the charged offense.** — Where defendant was charged with aggravated DWI and careless driving, and where defendant claimed that circumstances required her to drive in violation of the law, the metropolitan court did not err in refusing defendant's tendered instruction that imbedded the absence of duress as an essential element of aggravated DWI, because a defendant pleading duress is not attempting to disprove a requisite mental state, but defendants in that context are instead attempting to show that they ought to be excused from criminal liability because of the circumstances surrounding their intentional act. *State v. Percival*, 2017-NMCA-042.

**Collateral attack on prior convictions.** — Where the municipal court judge, who accepted the defendant's prior DWI guilty pleas, testified that his standard practice was to inform defendants that it was their right to go to trial, to plead not guilty, to present witnesses and evidence, and to be represented by counsel and no evidence was presented to show that the outcome of the defendant's prior DWI cases would have been affected in any way if the municipal court judge had strictly followed the procedure in Rule 8-502 NMRA, the deficiencies in the information provided by the municipal court judge in accepting the defendant's prior DWI guilty pleas did not constitute fundamental error and the defendant cannot collaterally attack the validity of the prior DWI convictions. *State v. Pacheco*, 2008-NMCA-059, 144 N.M. 61, 183 P.3d 946, cert. denied, 2008-NMCERT-003, 143 N.M. 681, 180 P.3d 1180.

**Right to counsel.** — Provision of this section subjecting defendant who refuses to submit to chemical testing to a mandatory jail sentence upon conviction of DWI does not violate the constitutional right to counsel. *State v. Kanikaynar*, 1997-NMCA-036, 123 N.M. 283, 939 P.2d 1091, cert. quashed, 124 N.M. 269, 949 P.2d 283; *Kanikaynar v. Sisneros*, 190 F.3d 1115 (10th Cir. 1999), cert. denied, 528 U.S. 1090, 120 S. Ct. 821, 145 L. Ed. 2d 691 (2000).

**No right to counsel when under custodial arrest following testing.** — A person issued a citation and placed under custodial arrest for driving while under the influence of intoxicating liquor does not have a constitutional right to counsel immediately following a breath alcohol test since it did not amount to initiation of judicial criminal proceedings or prosecutorial commitment, nor was the period following administration of the test a critical stage. *State v. Sandoval*, 1984-NMCA-053, 101 N.M. 399, 683 P.2d 516.

**Right to jury trial.** — A potential period of probation of more than six months does not present the degree of liberty deprivation that would convert the offense under Subsection D to the nature of such a serious offense as would trigger the right to a jury trial. *Meyer v. Jones*, 1988-NMSC-011, 106 N.M. 708, 749 P.2d 93.

Defendant charged with driving while intoxicated, second offense, was entitled to a jury trial. *State v. Grace*, 1999-NMCA-148, 128 N.M. 379, 993 P.2d 93, cert. denied, 128 N.M. 149, 990 P.2d 823.

**Duress defense.** — The defense of duress is available against the strict liability charge of driving while intoxicated. *State v. Rios*, 1999-NMCA-069, 127 N.M. 334, 980 P.2d 1068, cert. denied, 127 N.M. 390, 981 P.2d 1208.

**Involuntary intoxication defense.** — Because driving while impaired to the slightest degree in violation of Subsection A of Section 66-8-102 NMSA 1978 is a strict liability crime, involuntary intoxication is not a defense. *State v. Gurule*, 2011-NMCA-042, 149 N.M. 599, 252 P.3d 823.

Where defendant, who was ill, was visiting defendant's family; a family member served defendant a "tea" to clear up defendant's symptoms; the "tea" contained bourbon; defendant did not observe the preparation of the "tea", did not know that the "tea" contained alcohol, and did not taste the alcohol in the "tea"; and defendant was charged with DWI contrary to Subsection A of Section 66-8-102 NMSA 1978, under the impaired to the slightest degree standard, the defense of involuntary intoxication was not available as a defense. *State v. Gurule*, 2011-NMCA-042, 149 N.M. 599, 252 P.3d 823.

**Offense/conviction chronological sequence rule does not apply.** — Offense/conviction chronological sequence rule, judicially required for imposition of habitual offender penalties, does not apply to driving while intoxicated sentencing. *State v. Hernandez*, 2001-NMCA-057, 130 N.M. 698, 30 P.3d 387, cert. denied, 130 N.M. 558, 28 P.3d 1099.

**Right to preliminary hearing.** — An accused has no right to a preliminary hearing on a misdemeanor charge of driving while intoxicated. *State v. Greyeyes*, 1987-NMCA-022, 105 N.M. 549, 734 P.2d 789, cert. denied, 105 N.M. 521, 734 P.2d 761.

**Defendant had gout when defendant performed field sobriety tests.** — Where a police officer asked defendant if defendant had any physical injury or medical condition

that would impair defendant’s ability to perform field sobriety tests; defendant stated that defendant had gout in defendant’s feet, but did not tell the officer that defendant could not perform the tests; the officer testified that defendant performed the field sobriety tests poorly; and defendant testified that defendant had gout in defendant's feet, and that because defendant played golf earlier in the day, defendant’s feet were sore when defendant performed the tests, the trial court did not abuse its discretion in admitting the officer’s testimony. *State v. Bowden*, 2010-NMCA-070, 148 N.M. 850, 242 P.3d 417, cert. denied, 2010-NMCERT-006, 148 N.M. 582, 241 P.3d 180.

**Blood samples taken more than two hours after arrest are admissible.** — Where a blood sample was drawn more than two hours after defendant was arrested, the results of the blood test were admissible as evidence under Subsection E of Section 66-8-110 NMSA 1978. *State v. Bowden*, 2010-NMCA-070, 148 N.M. 850, 242 P.3d 417, cert. denied, 2010-NMCERT-006, 148 N.M. 582, 241 P.3d 180.

**Defense of duress.** — Where defendant testified that defendant and defendant’s companions were in a bar when a fight broke out, defendant was struck in the mouth with a bottle, defendant and defendant's companions sought refuge in defendant’s car, defendant noticed someone approaching the car whom defendant believed to be the person who had struck defendant in the mouth and whom defendant believed to have a bottle, and defendant started the car and took off; and defendant asserted that, if defendant was impaired, defendant did not intend to drive while impaired, but did drive only because defendant feared immediate great bodily harm to defendant and defendant’s companions, defendant’s defense of duress did not require defendant to admit to impairment. *State v. Tom*, 2010-NMCA-062, 148 N.M. 348, 236 P.3d 660.

**A defendant is not required to challenge the admissibility of breath-alcohol test results in a pretrial motion.** State v. Tom, 2010-NMCA-062, 148 N.M. 348, 236 P.3d 660.

**Defendant's motion to suppress evidence based on whether the police had reasonable suspicion to detain him was not sufficiently particular to alert the court that the grounds for suppressing evidence related to the DWI checkpoint's illegality.** — Where defendant was stopped at a checkpoint and later charged with aggravated DWI based on a refusal to submit to chemical testing, and where defendant filed a motion to suppress based upon lack of reasonable suspicion to detain him initially or beyond the scope of the initial traffic stop, and where, at trial, the state was ready to proceed although the sobriety checkpoint's supervising officer was unavailable to testify, and where defendant argued that the state had the burden of showing that the checkpoint was constitutional and therefore the supervising checkpoint officer was a necessary witness, the metropolitan court erred in concluding that defendant's motion to suppress was made with enough specificity to trigger the necessity of the officer's testimony at trial and in dismissing the case, because defendant's motion was insufficiently particular to alert the metropolitan court or the state that grounds for suppressing evidence related to the checkpoint's illegality. The record reflects that defendant's motion did not specifically challenge the legality of the checkpoint or argue

that the state failed to comply with any of the guidelines for determining whether a checkpoint is reasonable. *State v. Hebenstreit*, 2022-NMCA-033.

## VII. JURISDICTION.

**Lack of jurisdiction to deny credit for time served on probation.** — Where defendant, who was convicted of DWI, violated probation and the district court did not revoke defendant's probation before the probationary period expired, the court lost jurisdiction under Section 31-20-8 NMSA 1978 to deny defendant credit for time served on probation as provided in Subsection S of Section 66-8-102 NMSA 1978. *State v. Ordunez*, 2010-NMCA-095, 148 N.M. 620, 241 P.3d 621, cert. granted, 2010-NMCERT-010, 149 N.M. 64, 243 P.3d 1146, *aff'd by* 2012-NMSC-024.

**State officers' authority to investigate DWI in Indian country.** — State officers have authority to enter Indian country to investigate off-reservation crimes committed in the officers' presence by Indians, so long as the investigation does not infringe on tribal sovereignty by circumventing or contravening a governing tribal procedure. *State v. Harrison*, 2010-NMSC-038, 148 N.M. 500, 238 P.3d 869, *aff'g* 2008-NMCA-107, 144 N.M. 651, 190 P.3d 1146.

**Field sobriety tests performed in Indian country.** — Field sobriety tests are procedural, rather than substantive, in nature because they are the investigative method by which the state enforces its substantive law prohibiting DWI, and in the absence of a tribal procedure governing the administration of field sobriety tests a state officer may investigate a possible DWI by administering field sobriety tests in Indian country. *State v. Harrison*, 2010-NMSC-038, 148 N.M. 500, 238 P.3d 869, *aff'g* 2008-NMCA-107, 144 N.M. 651, 190 P.3d 1146.

Where a state officer, who was not cross-commissioned with the Bureau of Indian Affairs or an Indian nation, tribe, or pueblo, observed a vehicle traveling on a county road at a high rate of speed in excess of the speed limit; the officer pursued the vehicle; the vehicle did not stop when the officer turned on the emergency lights or the siren of the police vehicle; when the vehicle crossed a bridge and entered the Navajo Reservation, the driver threw a bottle containing a yellow liquid out of the passenger window; the vehicle stopped inside the Navajo Reservation; defendant, who was driving the vehicle, had blood shot, watery eyes, smelled moderately of alcohol and admitted that defendant had thrown a bottle of beer out of the vehicle; defendant failed field sobriety tests; defendant was Navajo; and the Navajo Nation did not have a tribal procedure governing the administration of field sobriety tests, the traffic stop and the administration of the field sobriety tests did not infringe on the sovereignty of the Navajo Nation. *State v. Harrison*, 2010-NMSC-038, 148 N.M. 500, 238 P.3d 869, *aff'g* 2008-NMCA-107, 144 N.M. 651, 190 P.3d 1146.

**Municipality may enact a drunken driving ordinance** notwithstanding that state statute covers same subject matter and provides penalty for violations. *Mares v. Kool*, 1946-NMSC-032, 51 N.M. 36, 177 P.2d 532.

**Municipal court had subject matter jurisdiction to try first offenders** for driving while intoxicated (DWI), contrary to local ordinance, where the charges were brought under the ordinance rather than this section. *Incorporated Cnty. of Los Alamos v. Montoya*, 1989-NMCA-004, 108 N.M. 361, 772 P.2d 891, cert. denied, 108 N.M. 273, 771 P.2d 981.

**State's appeal after remand to magistrate.** — District court's order remanding defendant's misdemeanor DWI trial to magistrate court was, in effect, a dismissal of the charges against defendant; thus, under the doctrine of practical finality, the appellate court had jurisdiction to review the state's appeal. *State v. Ahasteen*, 1998-NMCA-158, 126 N.M. 238, 968 P.2d 328.

**Prosecutorial discretion.** — Although magistrate court has concurrent jurisdiction with district court over misdemeanor DWI cases, a defendant has no right to demand trial in the magistrate court; the decision is one of prosecutorial discretion and can only be challenged upon a showing of bad faith. *State v. Ahasteen*, 1998-NMCA-158, 126 N.M. 238, 968 P.2d 328.

**Court loses jurisdiction upon entering of nolle prosequi.** — The court which first acquired jurisdiction when a prosecution was commenced therein loses jurisdiction by the entering of a nolle prosequi, and thereafter another prosecution may be carried on in another court of coordinate jurisdiction. *State v. Sweat*, 1967-NMCA-021, 78 N.M. 512, 433 P.2d 229.

**Inferior court may be divested of concurrent jurisdiction prosecution.** — As this section vests concurrent jurisdiction in justice of the peace courts (now magistrate courts) and district courts in a case of first offense, that jurisdiction having first attached in the inferior court it could be divested by the district attorney and transferred to the district court and defendant could be prosecuted in district court after the nolle prosequi was entered in the justice court. *State v. Sweat*, 1967-NMCA-021, 78 N.M. 512, 433 P.2d 229.

**Section subject to assimilation under federal law.** — The offenses described by Section 66-5-39 NMSA 1978 (driving while license suspended), this section (driving while under the influence) and Section 66-7-3 NMSA 1978 (violation of traffic laws) are all criminal offenses, and, as such, the applicable sentences are assimilated for offenses committed on military installations within the state under the Assimilative Crimes Act, 18 U.S.C. § 13. *United States v. Adams*, 140 F.3d 895 (10th Cir.), cert. denied, 525 U.S. 895, 119 S. Ct. 219, 142 L. Ed. 2d 180 (1998).

## VIII. EVIDENCE.

### A. GENERALLY.

**Trustworthiness doctrine.** — The trustworthiness doctrine, which provides that unless the corpus delicti of an offense has been otherwise established, a conviction cannot be

sustained solely on the extrajudicial admissions of the accused, was not applicable where the corpus delicti of the crime of DWI was established by independent evidence showing that someone drove while intoxicated. *State v. Owelicio*, 2011-NMCA-091, 150 N.M. 528, 263 P.3d 305, cert. granted, 2011-NMCERT-009, 269 P.3d 903.

**Evidence to establish the corpus delicti of DWI.** — Where a police officer, who was responding to a reported accident, observed defendant getting into the car on the passenger side and another person outside the car changing a flat tire; the car had two flat front tires; no one was sitting in the driver's seat; defendant and the other person showed signs of intoxication; defendant and the other person denied that the other person was driving the car; defendant's sibling testified that the other person was driving the car when defendant and the other person left a bar; defendant admitted several times that defendant was driving the car; defendant testified that the only persons in the car were defendant and the other person; no other persons were present when the officer investigated the accident; and other than defendant's admission to driving, there was no other evidence that defendant drove the car, there was independent evidence that the crime of DWI had been committed by someone and the trustworthiness of defendant's admission to driving was not necessary for purposes of establishing the corpus delicti of DWI, because the identity of the driver is not part of the corpus delicti of the offense of DWI. *State v. Owelicio*, 2011-NMCA-091, 150 N.M. 528, 263 P.3d 305, cert. granted, 2011-NMCERT-009, 269 P.3d 903.

**Sufficient evidence of trustworthiness of admission of DWI.** — Where a police officer, who was responding to a reported accident, observed defendant getting into the car on the passenger side and another person outside the car changing a flat tire; the car had two flat tires; no one was sitting in the driver's seat; defendant and the other person showed signs of intoxication; defendant and the other person were the only persons in the vicinity of the car; the other person denied driving the car and defendant admitted several times that defendant was driving the car; there was sufficient corroborating evidence to establish the trustworthiness of defendant's admission that defendant was driving and independent proof to confirm that defendant committed the crime of DWI. *State v. Owelicio*, 2011-NMCA-091, 150 N.M. 528, 263 P.3d 305, cert. granted, 2011-NMCERT-009, 269 P.3d 903.

**Intent not required.** — The only thing necessary to convict a person of driving while intoxicated is proof that the defendant was driving a vehicle either under the influence of intoxicating liquor or while he had a certain percentage of alcohol in his blood. *State v. Harrison*, 1992-NMCA-139, 115 N.M. 73, 846 P.2d 1082, cert. denied, 114 N.M. 720, 845 P.2d 814 (1993).

**Driving while impaired to the slightest degree** in violation of Subsection A of Section 66-8-102 NMSA 1978 is a strict liability crime. *State v. Gurule*, 2011-NMCA-042, 149 N.M. 599, 252 P.3d 823.

**State to preserve remains of blood alcohol sample.** — The state is constitutionally required to preserve what remains of a blood alcohol sample for independent testing by

a person charged with driving while under the influence of intoxicating liquor. *Montoya v. Metropolitan Court*, 1982-NMSC-092, 98 N.M. 616, 651 P.2d 1260.

**Scientific proof of defendant's blood or breath alcohol content** is not required for a conviction under this section. *State v. Neal*, 2008-NMCA-008, 143 N.M. 341, 176 P.3d 330, cert. denied, 2008-NMCERT-001, 143 N.M. 397, 176 P.3d 1129.

**Odor of liquor, standing alone,** does not of itself prove intoxication. *Sellers v. Skarda*, 1963-NMSC-019, 71 N.M. 383, 378 P.2d 617.

**Odor of liquor is not sufficient basis for inferring "under the influence".** — An odor of liquor on one's breath is not a sufficient basis for inferring he was "under the influence" of intoxicating liquor. *Lopez v. Maes*, 1970-NMCA-084, 81 N.M. 693, 472 P.2d 658, cert. denied, 81 N.M. 721, 472 P.2d 984.

**Failure to see decedent's car not sufficient basis for inference.** — The failure of driver to see decedent on well-lighted road when driving at 40 miles per hour, until just before the impact, is not a sufficient basis for the inference that defendant was under the influence of intoxicating liquor. *Lopez v. Maes*, 1970-NMCA-084, 81 N.M. 693, 472 P.2d 658, cert. denied, 81 N.M. 721, 472 P.2d 984.

**Although evidence showed that breath of accused smelled of whiskey** and that he was nervous and restless, it was insufficient to prove that he was under the "influence of intoxicating liquor." *State v. Sisneros*, 1938-NMSC-049, 42 N.M. 500, 82 P.2d 274.

**Not irrelevant to show defendant had given another a drink.** — In prosecution for driving automobile while under influence of intoxicating liquor, it was not irrelevant to show that on the occasion in question accused had given another a drink. *State v. Tinsley*, 1929-NMSC-085, 34 N.M. 458, 283 P. 907.

**Mere consumption of six beers not basis for inference of "influence".** — The mere consumption of about six beers during a two-hour period does not give rise to an inference that a person was under the influence of intoxicating liquor. *Lopez v. Maes*, 1970-NMCA-084, 81 N.M. 693, 472 P.2d 658, cert. denied, 81 N.M. 721, 472 P.2d 984.

**Admission of refusal to take test constitutional.** — The admission of evidence concerning the refusal to take a field sobriety test did not violate the right to be free from self-incrimination under the U.S. Const., amend. V and N.M. Const., art. II, § 15. *State v. Wright*, 1993-NMCA-153, 116 N.M. 832, 867 P.2d 1214, cert. denied, 117 N.M. 121, 869 P.2d 820 (1994).

**Refusal to take blood test may be excluded as irrelevant.** — In a prosecution for driving while intoxicated, a driver's refusal to take a blood alcohol test is no more a relevant circumstance to establish consciousness of guilt than the arresting officer's refraining from obtaining a search warrant indicates a belief that the driver is not intoxicated. Thus a trial court may exclude evidence of the refusal as irrelevant. *State v.*

*Chavez*, 1981-NMCA-060, 96 N.M. 313, 629 P.2d 1242, cert. denied, 96 N.M. 543, 632 P.2d 1181.

**Officer did not violate the Implied Consent Act by failing to arrange for a chemical test when defendant never asked for an opportunity to arrange for an additional blood test.** — Where arresting officer pulled over defendant's vehicle, administered field sobriety tests, and placed her under arrest for DWI, and where defendant initially declined to take a breath test and requested a blood test instead but ultimately consented to a breath test which measured two samples of defendant's breath alcohol content at 0.19 and 0.18, respectively, the district court did not err in denying defendant's motion to exclude the breath test results on the grounds that the officer failed to give her an opportunity to arrange for a chemical test in addition to the breath test, because defendant did not, after submitting to the breath test, ask for an opportunity to arrange for an additional blood test. *State v. Smith*, 2019-NMCA-027, cert. denied.

**Application of negligent entrustment of chattel to the sale of gasoline.** — The application of negligent entrustment of chattel to the sale of gasoline is consistent with New Mexico law and the weight of authority; vendors of gasoline owe a duty to refrain from supplying the gasoline for a vehicle to a driver who the vendor knows or has reason to know is intoxicated. *Morris v. Giant Four Corners, Inc.*, 2021-NMSC-028.

**A commercial gasoline vendor owes a duty of care to third parties using the roadway to refrain from selling gasoline to a driver it knows or has reason to know is intoxicated.** — In a case certified to the New Mexico Supreme Court by the United States Court of Appeals for the Tenth Circuit, where plaintiff, decedent's father and personal representative of decedent's estate, filed a wrongful death action alleging that defendant negligently entrusted gasoline to an intoxicated driver who subsequently killed decedent in an automobile accident, the supreme court concluded that under New Mexico law and the doctrine of negligent entrustment of chattel, a commercial gasoline vendor owes to a third party using the roadway a duty of care to refrain from selling gasoline to a driver the vendor knows or has reason to know is intoxicated. *Morris v. Giant Four Corners, Inc.*, 2021-NMSC-028.

## B. TESTS.

**Admission of breathalyzer results.** — A foundation for admission of breathalyzer may be established by evidence that the machine had been calibrated within one week of a defendant's breath test. *State v. Cavanaugh*, 1993-NMCA-152, 116 N.M. 826, 867 P.2d 1208, cert. denied, 117 N.M. 121, 869 P.2d 820 (1994)

**Term "eight one-hundredths"** in Subsection C refers not to a percentage of defendant's blood volume or weight, but to the reading derived from an intoxilyzer or blood test. *City of Lovington v. Tyson*, 1996-NMCA-068, 122 N.M. 49, 920 P.2d 119.

**Compliance with breath test machine certification requirements is mandatory.** — Compliance with the accuracy-ensuring regulations of the scientific laboratory division of the department of health is a condition precedent to admission of breath-alcohol test results, and before breath-alcohol test results may be admitted, the prosecution must make a threshold showing that the scientific laboratory division certification of the breath test machine was current at the time the test was taken and proof of compliance with other parts of the regulations, such as the calibration of the machine, will not satisfy the certification requirement. *State v. Tom*, 2010-NMCA-062, 148 N.M. 348, 236 P.3d 660.

**Foundational requirement of demonstrating that the breath test machine was certified.** — Where, at defendant's trial for DWI, the arresting officer testified that the officer administered a breath-alcohol test to defendant, that the officer was certified to operate the breath test machine, that a calibration check was performed immediately prior to administering the test to defendant, and that the officer believed the machine to be operating correctly when defendant performed the breath test; and the state did not present any testimony regarding whether the officer observed evidence of scientific laboratory division certification of the machine or whether the certification was current, the results of defendant's breath test was inadmissible because the state failed to lay the proper foundational requirement of demonstrating that the breath test machine was certified. *State v. Tom*, 2010-NMCA-062, 148 N.M. 348, 236 P.3d 660.

**Expert testimony challenging the reliability of the intoxilyzer machine.** – Although the scientific laboratory division regulations provide for receiving test results in evidence, they do not preclude a defendant from challenging the reliability of the test results by expert testimony after the breath test results have been admitted in evidence. *State v. King*, 2012-NMCA-119, 291 P.3d 160, cert. denied, 2012-NMCERT-011.

Where, at defendant's trial for driving while intoxicated, the only witness for the state was the arresting police officer who testified that the officer performed a breath alcohol test on defendant using an intoxilyzer 800 machine; defendant proposed to call an expert witness to testify concerning the pitfalls common to all intoxilyzer 800 machines for the purpose of challenging the reliability of the test performed on defendant; and the witness had not examined the specific intoxilyzer 800 machine used to test defendant, defendant was entitled to present expert testimony challenging the reliability of the intoxilyzer 800 and the expert's failure to examine the machine that was used to test defendant did not preclude the expert's testimony. *State v. King*, 2012-NMCA-119, 291 P.3d 160, cert. denied, 2012-NMCERT-011.

**Failure to show breath test machine had been certified.** — Where police officer testified that the officer was trained and certified to operate and calibrate a breath test machine and that the machine used to test defendant's breath alcohol level had been calibrated three days before it was used to test defendant's breath and the state did not show that the machine had been certified by the State Laboratories Division, the state failed to establish the necessary foundation for admission of the breath test results. *State v. Onsurez*, 2002-NMCA-082, 132 N.M. 485, 51 P.3d 528, cert. denied, 132 N.M. 551, 52 P.3d 411.

**Proof of certification required.** — Before a breath alcohol test card is admitted into evidence, the state must show that the breath test machine has been certified by the State Laboratories Division and that the certification was current at the time the breath test was taken. *State v. Martinez*, 2007-NMSC-025, 141 N.M. 713, 160 P.3d 894, *overruling Plummer v. Devore*, 1992-NMCA-079, 114 N.M. 243, 836 P.2d 1264, cert. denied, 114 N.M. 82, 835 P.2d 80 and abrogating *State v. Ruiz*, 1995-NMCA-098, 120 N.M. 534, 903 P.2d 845, cert. denied, 120 N.M. 498, 913 P.2d 240.

**Proficiency tests on breath test machines are mandatory.** — Where defendant, in his trial for driving while under the influence of intoxicating liquor or drugs, presented evidence that the state laboratory division of the department of health (SLD) had no information available regarding proficiency tests conducted on the intoxilyzer 8000 used to test defendant's breath alcohol level, the district court abused its discretion in admitting defendant's breath alcohol test results, despite testimony from the arresting officer that the breath machine used to measure defendant's breath alcohol level was certified by SLD, because satisfactory performance on four annual proficiency tests is a mandatory accuracy ensuring requirement for certification under the current version of the regulation. *State v. Hall*, 2016-NMCA-080.

**Breath alcohol instruments treated differently than equipment for purposes of foundational requirements.** — The legislature has delegated full authority to the scientific laboratory division (SLD) over the testing of persons believed to be DUI, including the establishment of criteria and specifications for equipment, quality control, testing methodology and standards, and the certification of breath alcohol instruments, operators, and instructors. SLD regulations impose extensive and explicit certification requirements on instruments, including that each individual instrument have a current certificate evidencing compliance with SLD regulations. In contrast, the only requirements for equipment stated in the regulations are that SLD approve and maintain a list of approved manufacturer's equipment. The regulations contain no requirement that SLD or certified instrument operators must confirm that each individual component of the breath alcohol instrument are SLD-approved before a breath alcohol test (BAT) is administered, and the regulations contain no indication that such individual confirmation is necessary to ensure the accuracy of the BAT result. *State v. Hobbs*, 2016-NMCA-022, cert. denied, 2016-NMCERT-002.

**Confirmation that SLD has approved the equipment on a breath alcohol instrument is not a foundational prerequisite to admission of BAT results.** — The state need not make a threshold showing that the certified operator of a certified breath alcohol instrument confirmed at the time of the test that equipment attached to the breath alcohol instrument is approved by the scientific laboratory division of the department of health (SLD) in order to lay a sufficient foundation under Rule 11-104(A) NMRA for the admission of breath alcohol test (BAT) results into evidence. SLD regulations contain no requirement that SLD or certified instrument operators must confirm that each individual tank and its contents are SLD-approved before a BAT is administered. The regulations contain no indication that such individual confirmation is

necessary to ensure the accuracy of a BAT result. *State v. Hobbs*, 2016-NMCA-022, cert. denied, 2016-NMCERT-002.

Where defendant challenged the admission of his breath alcohol test (BAT) results at trial on the ground that they lacked a sufficient foundation to support their admission into evidence because the certified instrument operator failed to establish that the gas canister, a piece of equipment separate from the breath alcohol instrument, complied with “accuracy ensuring” regulations, the trial court did not abuse its discretion in admitting defendant’s BAT results into evidence because the state is not required to make a threshold showing that the certified operator of a certified breath alcohol instrument confirmed at the time of the test that equipment attached to the instrument is SLD-approved in order to lay a sufficient foundation under Rule 11-104(A) NMRA for the admission of BAT results into evidence. *State v. Hobbs*, 2016-NMCA-022, cert. denied, 2016-NMCERT-002.

**Admission of breath test results was proper based on certification of breath machine.** — Where, during defendant’s trial for driving while under the influence of intoxicating liquor, defendant claimed that evidence of his blood alcohol content (BAC) was inadmissible because plaintiff, the town of Taos, failed to run radio frequency interference (RFI) tests for the location of the breath test machine and because the solution used to calibrate the breath machine was used at an incorrect temperature, the district court did not abuse its discretion in admitting defendant’s BAC readings, because the town of Taos proffered testimony that the breath machine had a certification sticker issued by the scientific laboratory division of the department of health on it when the test was run, that RFI tests were conducted on the breath machine one year and five months before defendant’s breath test, and, based on the evidence that the wet bath simulator used to calibrate the breath machine showed the target temperature, the district court could properly conclude that the simulator solution used to calibrate the breath test machine was used at the proper temperature. *Town of Taos v. Wisdom*, 2017-NMCA-066, cert. denied.

**Officer’s lay testimony regarding defendant’s performance on field sobriety tests was permissible.** — Where, during defendant’s trial for driving while under the influence of intoxicating liquor, the arresting officer limited his testimony to a recitation of what he said and did in administering field sobriety tests, and to his observations of defendant’s actions during the horizontal gaze nystagmus test, the walk-and-turn test, and the one-leg-stand test, never summarizing his observations into a conclusion regarding defendant’s performance on the field sobriety tests or correlating defendant’s performance on the tests with a blood alcohol content, the district court did not abuse its discretion in admitting the testimony as lay witness testimony, because the officer’s testimony was limited to testimony that is rationally based on the witness’s perception, and not based on scientific, technical, or other specialized knowledge. *Town of Taos v. Wisdom*, 2017-NMCA-066, cert. denied.

**Proper functioning of breath test machine.** — When an issue is raised regarding the validity of the breathalyzer test results, the state is required to make some showing

regarding the proper functioning of the breath test machine. *State v. Christmas*, 2002-NMCA-020, 131 N.M. 591, 40 P.3d 1035, cert. denied, 131 N.M. 619, 41 P.3d 345.

**Discrepancy in test results.** — Any discrepancy in regard to the validity of defendant's breathalyzer test goes to the weight of the evidence, not its admissibility. *State v. Christmas*, 2002-NMCA-020, 131 N.M. 591, 40 P.3d 1035, cert. denied, 131 N.M. 619, 41 P.3d 345.

**Uncertainty computations within the state laboratory division's chemical testing scheme.** — Where defendants, in consolidated appeals, were charged with driving under the influence of intoxicating liquor or drugs, the district court judges did not abuse their discretion in ruling that defendants' breath alcohol test results were sufficiently reliable to be admitted into evidence without uncertainty computations related to state laboratory division approved chemical testing, because the substance of defendants' admitted evidence did not affirmatively demonstrate a lack of reliability within the regulatory scheme for determining breath alcohol content. *State v. Montoya; State v. Yap*, 2016-NMCA-079, cert. denied.

**Improper admission of breath test results was not harmless error.** — Where the state presented evidence that defendant smelled of alcohol, admitted to drinking, failed field sobriety tests, almost struck an officer with defendant's car as defendant drove out of a parking lot at a bar, and was hysterical during the roadside encounter; defendant testified that defendant had been struck on the side of the mouth by a bottle during a fight at the bar, defendant had taken refuge in defendant's vehicle, defendant did not see or hear any officers around the car, and defendant was upset and in pain during the roadside encounter; and the state failed to lay a proper foundation for the admission of defendant's breath-alcohol test results by demonstrating that the breath test machine was certified, the admission of the results of defendant's breath-alcohol test results was not harmless error. *State v. Tom*, 2010-NMCA-062, 148 N.M. 348, 236 P.3d 660.

**Evidence of correlation between field sobriety test and blood alcohol content was prejudicial.** — Where defendant was convicted by a jury of driving while intoxicated; the trial court improperly permitted a police officer to give scientific evidence that correlated defendant's performance on three field sobriety tests with a ninety percent statistical probability of a blood alcohol content at or above the legal limit; the state produced sufficient evidence to support defendant's conviction without reference to the officer's improperly admitted scientific evidence; and there was substantial conflicting testimony by defendant to discredit the police officer's testimony, the improperly admitted evidence undermined defendant's credibility and the evidentiary error was not harmless. *State v. Marquez*, 2009-NMSC-055, 147 N.M. 386, 223 P.3d 931, *rev'g* 2008-NMCA-133, 145 N.M. 31, 193 P.3d 578.

**Ascertaining that the defendant has not had anything to eat, drink or smoke prior to the collection of a breath sample.** — The provisions of 7.33.2.12(B)(1) NMAC, which provides that a BRAT machine operator shall not take a breath sample until the operator has ascertained that the subject has not had anything to eat, drink or smoke

prior to the collection of the breath sample, does not require the operator to either ask a person suspected of drunk driving whether the subject has anything in the subject's mouth or to inspect the subject's mouth for food or other substances prior to initiating the required twenty-minute deprivation period. *State v. Willie*, 2009-NMSC-037, 146 N.M. 481, 212 P.3d 369, *rev'g* 2008-NMCA-030, 143 N.M. 615, 179 P.3d 1223 and *overruling State v. Collins*, 2005-NMCA-044, 137 N.M. 353, 110 P.3d 1090.

Where the defendants waited for an hour following their arrest to submit to a breathalyzer test; the defendants waited for the test either in the arresting officer's patrol car with their hands cuffed behind their backs, a holding cell at the police station in view of the arresting officer or the breath testing room while in the arresting officer's presence; the arresting officer engaged the defendants in conversation; the arresting officer testified that the officer was confident that the defendants had not put anything in their mouths or had anything to eat, drink or smoke during the one-hour period; and the officers neither asked the defendants if they had anything in their mouths nor inspected the defendants' mouths for any substances prior to taking their first breath samples, the officers did not violate 7.33.2.12(B)(1) NMAC, which provides that breath samples can be collected only after the arresting officer has ascertained that the subject has not had anything to eat, drink or smoke for at least twenty minutes prior to taking the first breath sample. *State v. Willie*, 2009-NMSC-037, 146 N.M. 481, 212 P.3d 369, *rev'g* 2008-NMCA-030, 143 N.M. 615, 179 P.3d 1223 and *overruling State v. Collins*, 2005-NMCA-044, 137 N.M. 353, 110 P.3d 1090.

**The 12-Step Protocol** (which is a process designed to enable law enforcement to identify (1) whether a subject's ability to operate a vehicle is impaired and (2) which category of drugs has affected a subject) is not scientific even though some of the individual steps of the Protocol are scientific processes and require a scientific foundation. *State v. Aleman*, 2008-NMCA-137, 145 N.M. 79, 194 P.3d 110, cert. denied, 2008-NMCERT-008, 145 N.M. 254, 195 P.3d 1266.

**Drug recognition evaluator.** — Where the state has established the scientific reliability of the 12-Step Protocol, a drug recognition evaluator may testify as an expert witness regarding the administration and results of the protocol as it is applied to a particular defendant. *State v. Aleman*, 2008-NMCA-137, 145 N.M. 79, 194 P.3d 110, cert. denied, 2008-NMCERT-008, 145 N.M. 254, 195 P.3d 1266.

**Horizontal gaze nystagmus test.** — Police officer's testimony that the National Highway Traffic Safety Administration accepted HGA testing, that the test was nationally certified and that the test was routinely given, the testimony was not sufficient to establish the evidentiary reliability required for admission of the test results. *State v. Torres*, 1999-NMSC-010, 127 N.M. 20, 976 P.2d 20.

To establish a scientific foundation for the admission into evidence of the results of the horizontal gaze nystagmus test (HGN), the state must establish the required physiological relationship between HGN and impairment, and between HGN and a

particular category of drugs. *State v. Aleman*, 2008-NMCA-137, 145 N.M. 79, 194 P.3d 110, cert. denied, 2008-NMCERT-008, 145 N.M. 254, 195 P.3d 1266.

**State need only show compliance with regulations that are accuracy-ensuring.** — Where defendant was charged with homicide by vehicle (driving while under the influence of drugs), causing great bodily injury (driving while under the influence of drugs), possession of drug paraphernalia, and possession of marijuana following a car collision in which defendant was the driver and where defendant's passenger was killed, and where a test of defendant's blood revealed the presence of THC, the principle psychoactive constituent of marijuana, and where defendant argued that his blood test results were improperly admitted at his trial, claiming that the blood test kit that was used to test his blood was not a scientific laboratory division (SLD) approved blood collection kit because the nurse that drew defendant's blood did not use the needle provided in the test kit, the district court did not err in finding that the use of the substitute needle was not a basis upon which to exclude defendant's blood test results, because there was no evidence that the needle included in the SLD-approved blood draw kit was accuracy-ensuring. *State v. Martinez*, 2020-NMCA-043, cert. denied.

**Blood test taken more than three hours after the collision did not lack a foundation.** — Where defendant was charged with homicide by vehicle (driving while under the influence of drugs), causing great bodily injury (driving while under the influence of drugs), possession of drug paraphernalia, and possession of marijuana following a car collision in which defendant was the driver and where defendant's passenger was killed, and where a test of defendant's blood revealed the presence of THC, the principle psychoactive constituent of marijuana, and where defendant argued that his blood test results were improperly admitted at his trial because SLD regulations provide that the initial blood samples should be collected within three hours of arrest, and his blood was collected approximately four hours after the collision, the district court did not err in admitting defendant's blood test results because SLD's regulation establishes a preference for blood tests to be administered within a time-frame that permits a statutory presumption of impairment while still allowing blood tests for alcohol or drugs to be administered outside of this time-frame and to be given appropriate weight under the factual circumstances of each case. *State v. Martinez*, 2020-NMCA-043, cert. denied.

**Accuracy-ensuring breath test regulation construed.** — The current regulation on collection and analyzation of breath samples requires the breath test operator to make a good faith attempt to collect and analyze at least two samples of breath, and if the difference in the results of the two samples exceeds 0.02 grams per 210 liters, a third sample of breath or blood shall be collected and analyzed. The two samples are inconsistent if they are not within .02 grams per 210 liters of each other, and if the two samples are inconsistent, the current regulation requires a good faith attempt to administer a third test in order for the state to establish the foundation to admit a single breath test result, unless the subject refused consent or was unable to consent. *State v. Garcia Pacheco*, 2023-NMCA-074, cert. denied.

**Insufficient foundation to admit breath test results, but error was harmless.** — Where defendant was arrested on suspicion of DWI (impaired to the slightest degree), and where, following her arrest, could provide only one usable breath alcohol sample, and where, at trial, the metropolitan court, over defendant's objection, admitted and relied on a breath test result based on the single usable breath sample, the metropolitan court erred in admitting the breath sample, because the first breath sample gave a numerical reading and the second breath sample failed to produce a reading, and therefore the two samples were inconsistent; it was undisputed that the arresting officer did not attempt a third breath test or a blood test, and therefore the officer did not comply with the accuracy-ensuring regulation so that the state could establish the necessary foundation to admit the breath test results. The erroneous admission of the breath test results, however, was harmless, because in announcing its verdict, the metropolitan court did not mention the breath result but relied on other evidence, such as defendant's bloodshot, watery eyes, slurred speech, odor of alcohol, failure to follow instructions on the field sobriety tests that were administered, admission to drinking an alcoholic beverage, the presence of an open container, and defendant's erratic driving, and any reliance on the breath test was limited to the presence of alcohol, which was cumulative of defendant's admission. *State v. Garcia Pacheco*, 2023-NMCA-074, cert. denied.

**Compliance with regulations.** — The state laboratory division regulation, which requires an officer administering the breath test to collect a subject's breath for testing only after ascertaining that the subject has not had anything to eat, drink or smoke for at least twenty minutes prior to collection of the first breath sample, requires the officer to look in the subject's mouth or ask the subject if there is anything in his or her mouth. *State v. Willie*, 2008-NMCA-030, 143 N.M. 615, 179 P.3d 1223, *overruled by* 2009-NMSC-037, 146 N.M. 481, 212 P.3d 369.

**Proper admission of blood alcohol test.** — Because the state showed that the machine used to test defendant's blood alcohol content was calibrated and functioning properly within the seven-day period prior to defendant's blood alcohol test, the calibration requirements in the administrative regulations were met and it was not an abuse of discretion for the district court to admit the results of the blood alcohol test. *State v. Collins*, 2005-NMCA-044, 137 N.M. 353, 110 P.3d 1090, *overruled by State v. Willie*, 2009-NMSC-037, 146 N.M. 481, 212 P.3d 369.

**Admission of breathalyzer results.** — All that is necessary to lay a proper foundation for the admission of breathalyzer test results in a criminal DWI trial is the live testimony of the officer who administered the test as to his familiarity with the testing procedure, the recent calibration of the machine, and his observation that the test administration proceeded without error. *State v. Smith*, 1999-NMCA-154, 128 N.M. 467, 994 P.2d 47, cert. denied, 128 N.M. 149, 990 P.2d 823.

**BAC results and testimony about retrograde extrapolation are relevant under the implied to the slightest degree theory.** — Breath alcohol content (BAC) results and expert testimony about retrograde extrapolation are relevant under the implied to the

slightest degree theory to show that a defendant had alcohol in his system and, regardless of the numerical BAC, tended to show that the defendant's poor driving was a result of drinking alcohol. *State v. Garnenez*, 2015-NMCA-022, cert. denied, 2015-NMCERT-001.

Where defendant was charged with vehicular homicide and DWI, based on a theory of impaired to the slightest degree, the jury was entitled to consider the breath alcohol test results insofar as they were relevant as evidence of alcohol in defendant's system, and the fact that scientific retrograde extrapolation evidence was presented diminished the risk that the jury considered the breath alcohol test results in an inappropriate and prejudicial manner. *State v. Garnenez*, 2015-NMCA-022, cert. denied, 2015-NMCERT-001.

**Lack of evidence of rising or falling blood alcohol content.** — Although the defendant argued that the state failed to produce evidence by which a trier of fact could find that his blood alcohol content (BAC) was .10% at the time that he was actually driving his vehicle, he waived this argument when, following his arrest, the officer proposed to test the defendant's BAC a second time and he refused to take the test. A second BAC reading would have provided the sort of evidence necessary to show a "rising" or "falling" of the defendant's BAC. Also, the defendant need not have been informed of all of the consequences of his refusal to take a second test, since there is no requirement that a party must be informed of every possible consequence of an action before suffering the consequences of that action. *State v. Scussel*, 1994-NMCA-018, 117 N.M. 241, 871 P.2d 5, cert. denied, 117 N.M. 215, 870 P.2d 753.

**Inconclusive test requires corroboration.** — A blood or breath alcohol test administered over two hours after the time of driving, and yielding only marginal results, must be corroborated by additional evidence to support a jury verdict. *State v. Baldwin*, 2001-NMCA-063, 130 N.M. 705, 30 P.3d 394.

**Improper admission of blood alcohol test.** — The improper admission of a blood alcohol test (BAT) was harmless error since the defendant was charged with driving under the influence of intoxicating liquor or drugs and there was sufficient evidence to support a conviction of the offense without consideration of the BAT results. *State v. Gutierrez*, 1996-NMCA-001, 121 N.M. 191, 909 P.2d 751, cert. denied, 121 N.M. 57, 908 P.2d 750.

## C. SUFFICIENCY.

**Substantial evidence.** — Defendant's conviction of DWI was supported by substantial evidence where police officers observed that the defendant had red, blood shot and watery eyes, slurred speech and a very strong odor of alcohol on his breath; one officer testified that the defendant had admitted to the officer that he had been drinking at this mother's apartment; the officers observed several open cans of beer at the apartment of the defendant's mother; and defendant did not dispute that he refused to consent to

take a breath test. *State v. Soto*, 2007-NMCA-077, 142 N.M. 32, 162 P.3d 187, cert. denied, 2007-NMCERT-006, 142 N.M. 15, 162 P.3d 170.

**Guilty of manslaughter where collision directly resulted from defendant's intoxication.** — Where evidence established beyond all question that defendant drove his car upon highway in intoxicated condition and collision of his car with the rear of the one in which decedent was riding resulted not only proximately, but directly, from defendant's condition, trial court correctly instructed jury that if it should so find, defendant would be guilty of involuntary manslaughter. *State v. Alls*, 1951-NMSC-016, 55 N.M. 168, 228 P.2d 952.

**Actual physical possession.** — Where defendant had parked defendant’s truck on private property at an auto dealership; when the police officer encountered defendant, defendant was standing outside the truck which was parked with the hood open and the engine off; defendant had slurred speech, was unsteady, and had an odor of alcohol on defendant’s breath; and defendant failed field sobriety tests, defendant was not in actual physical control of the truck. *State v. Reger*, 2010-NMCA-056, 148 N.M. 342, 236 P.3d 654.

**Misdemeanor arrest rule satisfied by circumstantial evidence.** — Where an officer has not observed an intoxicated driver in actual physical control of a vehicle, the misdemeanor arrest rule is satisfied when the facts and circumstances occurring within the officer’s observation, in connection with what, under the circumstances, may be considered common knowledge, give the officer probable cause to believe or reasonable grounds to suspect that the intoxicated driver had been in actual physical control of the vehicle. *State v. Reger*, 2010-NMCA-056, 148 N.M. 342, 236 P.3d 654.

**Misdemeanor arrest rule satisfied.** — Where defendant had parked defendant’s truck on private property at an auto dealership; when the police officer encountered defendant, defendant was standing outside the truck which was parked with the hood open and the engine off; defendant had slurred speech, was unsteady, and had an odor of alcohol on defendant’s breath; and defendant failed sobriety tests, the officer could reasonably infer that defendant was intoxicated and had recently been in actual physical control of the vehicle, and the circumstances satisfied the requirement of the misdemeanor arrest rule that the offense be committed in the officer’s presence. *State v. Reger*, 2010-NMCA-056, 148 N.M. 342, 236 P.3d 654.

**The state failed to present sufficient evidence to establish the corpus delicti of driving.** — Where a law enforcement officer was dispatched to a parking lot in response to a 911 call that reported a vehicle collision at that parking lot, and where upon the officer's arrival, he observed defendant standing alone, approached her and asked what she was doing and why she was present at the scene, and where defendant admitted to having driven a U-Haul truck into two parked vehicles, that she physically pointed at the two vehicles in the parking lot, and informed the officer that her brother had driven the U-Haul truck away from the parking lot after the collision, and where, during the investigation, defendant admitted to smoking marijuana and taking two

oxycodone pills earlier that morning, and where defendant was arrested and charged with DWI, and where, at a bench trial in metropolitan court, the trial judge found defendant guilty of violating NMSA 1978, § 66-8-102(B), finding that the state presented an admission to crashing the U-Haul truck, an admission to taking Oxycontin and smoking marijuana, the district court erred in finding defendant guilty of DWI, because the state failed to present sufficient evidence to establish the corpus delicti of driving, because the evidence presented by the state lacked operative facts that would link the charged offense to defendant's admission. Outside of defendant's extrajudicial statement, there was no evidence that the two parked vehicles were damaged, that a collision occurred in the parking lot, or that defendant ever was in the vicinity of, much less operated, the vehicle she purportedly crashed. *State v. Yanni*, 2023-NMCA-084.

**Evidence was sufficient to show impairment to the slightest degree.** — Where defendant drove defendant's vehicle at a high rate of speed and turned into a parking lot with tires squealing; a police officer had to move to avoid being hit by defendant's vehicle; defendant had bloodshot, watery eyes and an odor of alcohol; and defendant admitted to having consumed beer and failed to adequately perform field sobriety tests by losing balance and failing to follow instructions, the evidence was sufficient to support the jury's finding of impairment to the slightest degree. *State v. Nevarez*, 2010-NMCA-049, 148 N.M. 820, 242 P.3d 387, cert. denied, 2010-NMCER T-006, 148 N.M. 582, 241 P.3d 180 and cert. quashed, 2011-NMCERT-001, 150 N.M. 558, 263 P.3d 900.

**Retroactive application of decision in Birchfield v. North Dakota relating to sanctions for refusing to submit to warrantless blood tests.** — The rule announced in Birchfield v. North Dakota, 136 S.Ct. 2160 (2016), which held that a person who is arrested for DWI may not be punished for refusing to consent to or submit to a blood test under an implied consent law unless the officer either obtains a warrant or proves probable cause to require the blood test in addition to exigent circumstances, may be applied retroactively, because a new rule may be applied retroactively when it is a substantive rule that alters the range of conduct or the class of persons that the law punishes, and Birchfield bars criminal sanctions previously imposed upon a subject for refusing to submit to warrantless blood tests. *State v. Vargas*, 2017-NMSC-029, *aff'g* 2017-NMCA-023, 389 P.3d 1080.

**Implied consent laws can no longer provide that a driver impliedly consents to a blood draw.** — The fourth amendment permits warrantless breath tests incident to legal arrests because noninvasive breath tests only slightly impact a subject's privacy and because the state has an interest in testing breath alcohol content to maintain highway safety and deter drunk driving, but blood tests bear too heavily on a subject's privacy interests to permit the state to seize warrantless samples at all DWI stops. Therefore, when a subject does not consent to a blood draw, officers must obtain a warrant or establish probable cause and exigent circumstances to justify a warrantless search. *State v. Vargas*, 2017-NMSC-029, *aff'g* 2017-NMCA-023, 389 P.3d 1080.

**A driver cannot be subjected to criminal penalties for refusing to submit to a warrantless blood draw.** — Where defendant consented to provide two breath test samples at a DWI checkpoint, but refused to submit to a blood test, her conviction for aggravated DWI was improper, because blood tests bear too heavily on a subject's privacy interests to permit the state to seize warrantless samples at all DWI stops, and when a subject does not consent to such a search, officers must obtain a warrant or establish probable cause and exigent circumstances to justify a warrantless search. *State v. Vargas*, 2017-NMSC-029, *aff'g* 2017-NMCA-023, 389 P.3d 1080.

**Sufficient evidence of driving while intoxicated, impaired to the slightest degree.** — Where defendant was convicted of driving while intoxicated, impaired to the slightest degree, and where the state presented evidence that defendant was driving her vehicle when it approached a DWI checkpoint, that the police officer on duty noticed an odor of alcohol coming from the vehicle and from defendant, that defendant had bloodshot and watery eyes, that defendant failed to successfully complete any of the four field sobriety tests that were administered, that defendant admitted to consuming alcohol, and that a breath alcohol test indicated that defendant had consumed alcohol, there was sufficient evidence to prove beyond a reasonable doubt that defendant had committed the crime of driving while intoxicated, impaired to the slightest degree. *State v. Vargas*, 2017-NMCA-023, cert. granted.

**Sufficient evidence of DWI.** — Where defendant was convicted of driving while under the influence of intoxicating liquor (DWI), and where the state presented a witness who testified that he heard defendant's truck as it approached and saw defendant's truck collide with a telephone pole while traveling at forty-five to fifty miles per hour, and where responding officers testified that defendant smelled of alcohol, had bloodshot, watery eyes, and was swaying back and forth when they encountered him less than twenty-one minutes after the collision, the evidence supports an inference that defendant had consumed alcohol and further supports the inference that defendant was impaired when he operated and crashed the vehicle less than half an hour previously. Viewing the evidence in the light most favorable to the verdict and indulging all reasonable inferences, substantial evidence supported defendant's conviction for DWI. *State v. Willyard*, 2019-NMCA-058, cert. denied.

**A defendant may not be held criminally liable for refusing to submit to a warrantless blood test based on implied consent.** — Where defendant was charged with aggravated driving while intoxicated, and where defendant's DWI charge was aggravated based on her refusal of a warrantless blood test, defendant's conviction for aggravated DWI was reversed because a driver may be deemed to have consented to a warrantless blood test under a state implied consent statute, but the driver may not be subject to a criminal penalty for refusing to submit to such a test, and therefore where defendant was threatened with an unlawful search, her refusal to submit to the search cannot be the basis for aggravating her DWI sentence. *State v. Vargas*, 2017-NMCA-023, cert. granted.

**Sufficient evidence to show refusal to submit to chemical testing.** — Where a police officer stopped defendant for driving without headlights; the officer noticed a strong odor of alcohol and that defendant had bloodshot eyes, a flushed face and slurred speech; defendant admitted to drinking three beers; defendant failed field sobriety tests; the officer read the implied consent act to defendant; defendant acknowledged that defendant understood the act but refused to provide a breath sample; the officer explained the consequences of a refusal to provide the breath sample; defendant acknowledged that defendant understood the consequence of a refusal; and defendant again refused to provide a breath sample, there was sufficient evidence to support the finding that defendant refused to submit to chemical testing. *State v. Loya*, 2011-NMCA-077, 150 N.M. 373, 258 P.3d 1165, cert. denied, 2011-NMCERT-006, 150 N.M. 763, 266 P.3d 632.

**Evidence sufficient to permit jury to infer DWI.** — Where defendant was given a breath test one hour after defendant stopped driving; the breathalyzer initially registered .09 and .08 three minutes later; defendant admitted that defendant had "slept some" after drinking but before driving; defendant's expert witness testified about the physiological consequences of alcohol ingestion and the difficulty of extrapolating back in time from a breathalyzer test administered at a later time; and based on the evidence, the jury could have reasonably inferred that defendant's breath alcohol level had peaked and that defendant was in the elimination stage when the breathalyzer test was given which would support a conclusion that defendant was driving with a blood alcohol level over the legal limit, there was sufficient evidence to support defendant's conviction of driving under the influence. *State v. Christmas*, 2002 NMCA 020, 131 N.M. 591, 40 P.3d 1035, cert. denied, 131 N.M. 619, 41 P.3d 345.

**Evidence sufficient to show driving under the influence.** — Where defendant admitted that he had consumed two beers prior to driving defendant’s vehicle; a police officer testified that defendant staggered out of a bar before defendant entered defendant’s vehicle; defendant was slow to react to the near collision with another vehicle as defendant was leaving the bar parking lot; defendant drove in reverse into a dangerous street; defendant had fumbling fingers when defendant searched for defendant’s driver’s license, registration and proof of insurance; defendant was slow to respond when exiting defendant’s vehicle; defendant had to brace against the vehicle for balance; defendant performed poorly on the field sobriety tests; and defendant refused to submit to a breath alcohol test, the evidence was sufficient to support defendant’s conviction of driving while intoxicated. *State v. Marquez*, 2009-NMSC-055, 147 N.M. 386, 223 P.3d 931, *aff'g* 2008-NMCA-133, 145 N.M. 31, 193 P.3d 578.

Where defendant weaved out of defendant’s driving lane, nearly colliding with another vehicle; defendant’s breath alcohol content test showed that there was alcohol in defendant’s system; defendant admitted drinking beer; the arresting officer noticed an odor of alcohol on defendant; and defendant failed some field sobriety tests, the evidence was sufficient to convict the defendant of violation of Subsection A of Section 66-8-102 NMSA 1978. *State v. Pickett*, 2009-NMCA-077, 146 N.M. 655, 213 P.3d 805, cert. denied, 2009-NMCERT-006, 146 N.M. 733, 215 P.3d 42.

**Sufficient evidence.** — Where defendant was stopped for an unilluminated license plate, the officer smelled an odor of alcohol emanating from defendant, defendant admitted that he had been drinking for two hours while preparing and eating dinner before driving his vehicle, defendant failed his field sobriety tests, defendant's eyes were bloodshot and watery, defendant had slurred speech and defendant's expert witness testified regarding the alcohol time response curve, defendant's per se DWI conviction, based in part on a 0.08 BAC result one hour and six minutes after defendant's arrest, was supported by substantial evidence. *State v. Day*, 2008-NMSC-007, 143 N.M. 359, 176 P.3d 1091.

**Since there was evidence that defendant, while driving fast at night without lights,** veered into the lane of an oncoming car, had an opened can of beer on the floorboard under the steering wheel, had smell of alcohol on his breath and spoke as if affected by the alcohol, had .075% blood alcohol and .086% urine alcohol content, had imbibed five or six beers during the day, had taken some heroin, and morphine content of the blood was .15 micrograms per milliliter while morphine content of the urine was .45 micrograms per milliliter, there was substantial evidence that defendant was driving the car while under the influence of either intoxicating liquor, or a narcotic drug, or both. *State v. Dutchover*, 1973-NMCA-052, 85 N.M. 72, 509 P.2d 264.

**Since officer testified that he smelled alcohol on defendant's breath,** that the defendant staggered when he walked, had difficulty in dialing the telephone, talked with difficulty and in the opinion of the officer was under the influence of alcohol when arrested, is substantial evidence to support the conviction of driving "under the influence." *City of Portales v. Shiplett*, 1960-NMSC-095, 67 N.M. 308, 355 P.2d 126.

**Aggravated DWI.** — When marginal blood alcohol test results from a test administered one hour and twenty-two minutes after driving, and without corroborating evidence to substantiate that defendant was actually driving with a blood alcohol count of 0.16 or greater, a conviction for per se aggravated DWI will be reversed. *State v. Notah-Hunter*, 2005-NMCA-074, 137 N.M. 597, 113 P.3d 867, cert. denied, 2005-NMCERT-006, 137 N.M. 766, 115 P.3d 229.

**DWI conviction affirmed.** — Where defendant smelled of alcohol, had slurred speech, admitted to drinking alcohol, failed field sobriety tests, and was speeding while driving down the middle of the road, sufficient evidence existed to find defendant guilty of the lesser included offense of driving while intoxicated in violation of Subsection A of this section. *State v. Notah-Hunter*, 2005-NMCA-074, 137 N.M. 597, 113 P.3d 867, cert. denied, 2005-NMCERT-006, 137 N.M. 766, 115 P.3d 229.

**Nexus between test results and earlier behavior.** — Defendant's conviction for a per se violation of the driving while intoxicated statute was affirmed where corroborating evidence established a nexus between his breath alcohol concentration test results and his behavior one hour and 31 minutes earlier at the time of driving. *State v. Martinez*, 2002-NMCA-043, 132 N.M. 101, 45 P.3d 41, cert. denied, 132 N.M. 193, 46 P.3d 100.

**Evidence supporting finding of driving while intoxicated.** — Defendant's conviction of driving while intoxicated was supported by substantial circumstantial evidence, where he admitted to the investigating officer that he had been drinking "all night", admitted leaving a liquor store and driving into a rail, and the level of alcohol found in his blood could reasonably lead the jury to infer that he had been drinking for several hours. *State v. Greyeyes*, 1987-NMCA-022, 105 N.M. 549, 734 P.2d 789, cert. denied, 105 N.M. 521, 734 P.2d 761; *State v. Luna*, 1980-NMSC-009, 93 N.M. 773, 606 P.2d 183.

**Evidence sufficient to show driving under the influence.** — There was sufficient evidence to show that the defendant was driving his vehicle under the influence of intoxicating liquor as required by subsection A: defendant's breath smelled strongly of alcohol; his eyes were bloodshot and watery; his speech was slurred; he admitted having recently consumed alcohol; he failed three field sobriety tests; he tested at .10% for blood alcohol content; and in the officer's opinion, the defendant was intoxicated. The defendant's argument that he failed the field sobriety tests due to impairment from back problems goes to the weight and effect placed on that evidence by the fact finder. Moreover, the evidence of intoxication was obtained 39 minutes after the defendant was stopped, inferring that the defendant was under the influence of alcohol at the time he was in control of the vehicle. *State v. Scussel*, 1994-NMCA-018, 117 N.M. 241, 871 P.2d 5, cert. denied, 117 N.M. 215, 870 P.2d 753.

Evidence regarding defendant's appearance, slurred speech, and a strong order of alcohol, as well as defendant's admission of having drunk a few beers and his refusal to submit to a chemical test for blood alcohol level was sufficient for a reasonable jury to conclude, beyond a reasonable doubt, that defendant's driving was likely impaired, and that he was guilty of DWI. *State v. Caudillo*, 2003-NMCA-042, 133 N.M. 468, 64 P.3d 495.

**Evidence sufficient to support inference of driving while intoxicated.** — Where officers found a defendant passed out in his vehicle in a parking lot of a store that does not sell alcohol at 10:30 a.m., the defendant appeared intoxicated, and the officers did not report seeing alcohol containers in or around the defendant’s vehicle, these facts could support a reasonable inference that the defendant drove to the parking lot while he was intoxicated. *State v. Gomez*, 2003-NMSC-012, 133 N.M. 763, 70 P.3d 753.

**Sufficient evidence of past driving while impaired.** — In defendant’s trial for driving while under the influence of intoxicating liquor, where the evidence included testimony of two witnesses from the scene who testified to seeing defendant in the driver’s side of the vehicle and operating the vehicle immediately after the initial crash and testimony that immediately after the crash defendant looked like he had been drinking, testimony from the officer that he detected a strong odor of alcohol on defendant’s breath, that defendant admitted that he had consumed “a few beers”, and that during the field sobriety tests, defendant swayed on the spot while standing, stepped out of position to maintain balance, used his arms for balance, and performed the tasks contrary to the instructions given, and evidence that defendant’s blood alcohol content after a twenty-minute deprivation period was .12, there was sufficient evidence to support defendant’s

conviction for DWI based on past driving while impaired. *Town of Taos v. Wisdom*, 2017-NMCA-066, cert. denied.

**Aggravated DWI based on past driving.** — In a prosecution for aggravated DWI, where there were no witnesses who personally observed defendant driving, there was sufficient evidence to support an inference that defendant had actually driven the vehicle based on the evidence presented at trial establishing that the arresting officer reached defendant's vehicle about five minutes after receiving a dispatch call alerting him that there was a pickup truck stuck in the median that was trying to back into traffic, that the officer observed that defendant's vehicle was stuck in the median, the vehicle was on, and the hazard lights were on, that defendant was alone, that the officer observed defendant exit from the driver's seat, and that defendant stated that he was coming from Albuquerque and was going to El Paso; the state presented sufficient evidence to support a conviction for DWI based on past driving. *State v. Alvarez*, 2018-NMCA-006, cert. denied.

**Sufficient evidence of driving under the influence of marijuana.** — Where defendant was charged with aggravated driving while under the influence of intoxicating liquor or drugs, there was sufficient evidence to support defendant's conviction where the state established evidence that the arresting officer observed that defendant could not maintain his lane of traffic, swerving multiple times onto the right shoulder and then to the left grazing the concrete lane divider, that after the traffic stop, the officer smelled burnt marijuana emitting from defendant's vehicle, that defendant produced a marijuana pipe from his vehicle and gave it to the officer, that defendant admitted to the officer that he had smoked marijuana, that defendant failed several field sobriety tests, and that defendant refused to submit to a blood test. *State v. Storey*, 2018-NMCA-009, cert. denied.

**Evidence supported finding that defendant was under the influence at time of accident.** *State v. Copeland*, 1986-NMCA-083, 105 N.M. 27, 727 P.2d 1342, cert. denied, 104 N.M. 702, 726 P.2d 856.

**Substantial evidence to support conviction despite alleged inaccuracy of breath machine.** — Despite the defendant's argument that breath machines generally are only accurate to plus or minus 10%, there was substantial evidence - including a test result of .153% and the testimony of the arresting officer - to support a conviction. *State v. Watkins*, 1986-NMCA-080, 104 N.M. 561, 724 P.2d 769, cert. dismissed, 104 N.M. 522, 724 P.2d 231.

**Sufficient evidence to support convictions for DWI.** — Where defendant argued that uncertainty inherent to all systems of forensic measurement renders his breath alcohol test (BAT) results insufficiently reliable to support his convictions for per se DWI and driving while impaired to the slightest degree, evidence that defendant's BAT resulted in two readings of 0.08, when viewed in the light most favorable to the guilty verdict, was sufficient to support defendant's convictions. *State v. Montoya; State v. Yap*, 2016-NMCA-079, cert. denied.

**Sufficient evidence to support conviction for DWI despite evidence that breath machine was not certified.** — Where defendant, in his trial for driving while under the influence of intoxicating liquor or drugs, argued that the reliability of the breath machine used to test his breath alcohol level was unreliable because the state laboratory division of the department of health (SLD) had no current year information available regarding proficiency tests conducted on the breath machine used to test defendant's breath, evidence that defendant's breath alcohol test resulted in a reading of 0.10, when viewed in the light most favorable to the verdict, was sufficient to support defendant's conviction for per se DWI, notwithstanding defendant's attack on the reliability of the breath testing machine. *State v. Hall*, 2016-NMCA-080.

**Evidence supporting finding of driving while intoxicated.** — Substantial evidence supported defendant's conviction for driving while intoxicated despite consideration of the duress defense. *State v. Rios*, 1999-NMCA-069, 127 N.M. 334, 980 P.2d 1068, cert. denied, 127 N.M. 390, 981 P.2d 1208.

## IX. SENTENCING.

**Retroactive application of change of credit for time served would be unconstitutional.** — Where, in 2004, defendant pleaded guilty to a fourth-degree aggravated DWI; in 2007, defendant was arrested for another DWI in violation of the 2004 probation conditions; in 2004, Section 66-8-102 NMSA 1978 gave defendant full credit for time served on probation; and in 2007, the statute gave defendant no credit for time served on probation, the 2007 no-credit statutory amendment did not apply to defendant's probation revocation for the 2004 offense because the retroactive application of the 2007 no-credit version of Section 66-8-102 NMSA 1978 to defendant for the 2004 offense would increase the punishment allowable for the 2004 offense which would violate the ex post facto clauses of the United States and New Mexico constitutions. *State v. Ordunez*, 2012-NMSC-024, 283 P.3d 282, *aff'g* 2010-NMCA-095, 148 N.M. 620, 241 P.3d 621.

**Failure to impose mandatory sentence.** — Where defendant was sentenced for a second offense of driving under the influence of intoxicating liquor or drugs; the metropolitan court sentenced defendant to incarceration, but failed to impose the mandatory requirement that defendant serve community hours and pay a fine, neither the district court nor the metropolitan court had authority to impose an additional period of incarceration or to impose new penalties after defendant completed the original sentence. *State v. Padilla*, 2011-NMCA-029, 150 N.M. 344, 258 P.3d 1136.

**Prior convictions.** — All prior DWI offenses which could be used to enhance a defendant's DWI sentence must be proved by the state at the sentencing hearing. *State v. Diaz*, 2007-NMCA-026, 141 N.M. 223, 153 P.3d 57.

**Right to challenge validity of prior convictions.** — A defendant has a right, during a sentence enhancement proceeding, to challenge a prior conviction by guilty plea for

lack of subject matter jurisdiction. *State v. Nash*, 2007-NMCA-141, 142 N.M. 754, 170 P.3d 533.

**Offender not subject to both felony DWI provision and habitual offender statute.** — Defendants convicted of the offense of felony DWI under Subsection G are not subject to sentence enhancement under both the felony DWI provision and the habitual offender provision, Section 31-18-17 NMSA 1978. *State v. Anaya*, 1997-NMSC-010, 123 N.M. 14, 933 P.2d 223; *State v. Gonzales*, 1997-NMSC-050, 124 N.M. 171, 947 P.2d 128.

**Offender not subject to both felony DWI provision and aggravation statute.** — The maximum sentence for felony DWI under Subsection G cannot be enhanced by the aggravation provisions of Section 31-18-15.1 NMSA 1978. *State v. Coyazo*, 2001-NMCA-018, 130 N.M. 428, 25 P.3d 267, cert. denied, 130 N.M. 254, 23 P.3d 929.

**Use of prior uncounseled convictions to enhance sentence.** — A prior uncounseled misdemeanor DWI conviction that did not result in a sentence of imprisonment could be used for enhancement under this section, and such use did not violate the New Mexico Constitution. *State v. Woodruff*, 1997-NMSC-061, 124 N.M. 388, 951 P.2d 605; *State v. Aragon*, 1997-NMSC-062, 124 N.M. 399, 951 P.2d 616; *State v. Hosteen*, 1997-NMSC-063, 124 N.M. 402, 951 P.2d 619.

**Immunity from future enhancements of sentencing.** — Absent a showing that defendant's plea of guilty or no contest to a charge of DWI was expressly conditioned upon a promise that his conviction would not be used in the future to aggravate subsequent DWI sentences, he is not entitled to a claim of immunity from future enhancement of subsequently committed DWI offenses. *State v. Gaede*, 2000-NMCA-004, 128 N.M. 559, 994 P.2d 1177, cert. denied, 128 N.M. 688, 997 P.2d 820.

**Presentence confinement credits.** — Trial court must award presentence confinement credit to first-time offenders and has discretionary authority to grant presentence confinement credit, for a defendant who has been convicted of a second or third offense of driving under the influence. *State v. Calvert*, 2003-NMCA-028, 133 N.M. 281, 62 P.3d 372, cert. denied, 133 N.M. 413, 63 P.3d 516.

**Effect of municipal ordinance violations.** — A person convicted of violating a municipal ordinance prohibiting driving while intoxicated can be treated as having a prior offense under this section for purposes of sentencing a defendant for a second or subsequent conviction. However, when the defendant was convicted for three prior violations of a municipal ordinance, the mandatory jail term for fourth offenders did not necessarily apply, as the language is unclear as to whether this section encompasses municipal ordinance convictions. *State v. Russell*, 1991-NMCA-123, 113 N.M. 121, 823 P.2d 921.

**Proof of prior convictions.** — An order in the form of a judge's handwritten notations on a complaint was sufficient to prove prior convictions for driving while intoxicated.

*State v. Sedillo*, 2001-NMCA-001, 130 N.M. 98, 18 P.3d 1051, cert. quashed, 131 N.M. 221, 34 P.3d 610.

**Validity of prior DWI guilty pleas.** — Where the state met its burden of showing that defendant voluntarily signed waivers of his right to counsel at the time of guilty pleas resulting in prior DWI convictions, the court did not err in relying on those convictions to enhance defendant's DWI conviction from a misdemeanor to a felony. *State v. Gonzales*, 1997-NMSC-050, 124 N.M. 171, 947 P.2d 128.

**The district court properly enhanced defendant's DWI conviction.** — Where defendant was convicted of DWI, and where the state attached a copy of an abstract of record from the motor vehicle division of the taxation and revenue department to its enhancement information which contained the following evidence: that defendant was arrested for DWI in Bernalillo county in 1990, that defendant requested an attorney, that defendant pled guilty to DWI, that, in 1991, defendant was found guilty of DWI by a judge, who signed the document, that the abstract contained a hand-written notation of "P.D. Raina Owen," and that defendant was sentenced for DWI, and where defendant claimed that the abstract failed to show that his prior conviction was counseled, the evidence was sufficient for the district court to infer that defendant was represented by counsel from the public defender's office, Raina Owen, when he pled guilty to DWI in 1991. The foregoing was sufficient to meet the state's initial burden of proving its prima facie case of defendant's 1991 DWI conviction, and defendant failed to rebut this showing. *State v. Warford*, 2022-NMCA-034.

**Use of out-of-state conviction to enhance penalty.** — The phrase "under this section" does not include within its purview out-of-state convictions; therefore, only those valid prior DWI convictions obtained in New Mexico courts may be considered for purposes of criminal enhancement penalties. *State v. Nelson*, 1996-NMCA-012, 121 N.M. 301, 910 P.2d 935, superseded by statute, *State v. Lewis*, 2008-NMCA-070, 144 N.M. 156, 184 P.3d 1050.

**Presentence confinement credit for multiple offenders.** — Because the legislature provides in this section that, for a first DWI offender, time spent in jail prior to conviction is to be credited against the offender's sentence, the legislature's silence as to second and third offenses implies an intent to afford courts discretion to grant credit to second and third offenders. *State v. Martinez*, 1998-NMSC-023, 126 N.M. 39, 966 P.2d 747.

**Suspending or deferring impoundment of vehicle.** — Magistrate court had the discretion to suspend or defer the impoundment of the defendant's vehicle after his conviction of a second offense of driving under the influence. *State v. Barber*, 1989-NMCA-058, 108 N.M. 709, 778 P.2d 456.

**Presentence confinement credit not allowed for voluntary inpatient program.** — Presentence confinement credit against a felony DWI jail sentence may not be given for time spent in an inpatient alcohol treatment program, where the state did not require defendant's participation in the program and exercised no control over him while he was

in the program. *State v. Clah*, 1997-NMCA-091, 124 N.M. 6, 946 P.2d 210, cert. denied, 123 N.M. 626, 944 P.2d 274.

**Presentence confinement credit for in-patient alcohol treatment** can only be applied to a defendant's sentence of alcohol treatment and not a jail sentence. *State v. Martinez*, 1998-NMSC-023, 126 N.M. 39, 966 P.2d 747.

**Offset of time spent in post-traumatic unit after sentencing.** — In sentencing for felony DWI, the trial court had discretion to allow an offset for the postsentence time defendant spent in a post-traumatic stress unit at a veteran's hospital, so long as it did not impinge on the mandatory portion of the sentence required by Subsection G. *State v. Clah*, 1997-NMCA-091, 124 N.M. 6, 946 P.2d 210, cert. denied, 123 N.M. 626, 944 P.2d 274.

**For purposes of DWI sentencing, proof beyond a reasonable doubt is not required** to prove prior DWI convictions; a preponderance of the evidence is sufficient. *State v. Bullcoming*, 2008-NMCA-097, 144 N.M. 546, 189 P.3d 679; *aff'd in part, rev'd in part*, 2010 NMSC-007, 147 N.M. 487, 226 P.3d 1, cert. granted, 131 S. Ct. 62, 177 L.Ed. 2d 1152.

**Insufficient evidence of prior convictions.** — Where the state filed an information alleging that defendant had eight prior convictions for DWI; although the document indicated that certified copies of the abstracts of record or judgments and sentences associated with the prior convictions were attached as exhibits, the exhibits were never filed; the state presented a copy of a prior judgment and sentence which was filed in the same judicial district and which reflected that the court had previously determined that defendant had admitted to at least six prior convictions for DWI as a part of a plea agreement; the state asked the court to take judicial notice of its own records; and the court took judicial notice that the court had found that defendant had at least six prior DWI convictions, the state failed to make a prima facie showing of any prior DWI convictions. *State v. Lopez*, 2009-NMCA-127, 147 N.M. 364, 223 P.3d 361, cert. denied, 2009-NMCERT-010, 147 N.M. 452, 224 P.3d 1257.

**Offenses included in a plea agreement.** — A plea agreement that includes two separate DWI offenses, which are later combined in one judgment and sentence should be considered as two DWI convictions for purpose of sentencing. *State v. Yazzie*, 2009-NMCA-040, 146 N.M. 115, 207 P.3d 349, cert. denied, 2009-NMCERT-003, 146 N.M. 603, 213 P.3d 507.

**This section requires that equivalent out-of-state convictions** be used to enhance a defendant’s sentence for repeated DWI convictions. *State v. Lewis*, 2008-NMCA-070, 144 N.M. 156, 184 P.3d 1050, cert. denied, 2008-NMCERT-004, 144 N.M. 47, 183 P.3d 932.

**Test for equivalent statutes.** — To determine whether two statues are equivalent for purposes of using an out-of-state conviction to enhance a defendant’s sentence for

repeated DWI convictions, the focus is on whether the elements of the statutes are equivalent as to the degree of impairment prohibited by the statutes. *State v. Lewis*, 2008-NMCA-070, 144 N.M. 156, 184 P.3d 1050, cert. denied, 2008-NMCERT-004, 144 N.M. 47, 183 P.3d 932.

**Penalties for repeat offenders.** — The legislature clearly intended to amend and increase the penalties for repeat offenders in this section. *State v. Smith*, 2004-NMSC-032, 136 N.M. 372, 98 P.3d 1022.

**DWI sentencing is plainly governed by this section** and not the Criminal Code or Criminal Procedure Act. *State v. Smith*, 2004-NMCA-026, 135 N.M. 162, 85 P.3d 804, cert. granted, 2004-NMCERT-001, 135 N.M. 160, 85 P.3d 802, *rev'd*, 2004-NMSC-032, 136 N.M. 372, 98 P.3d 1022.

**Electronic monitoring system.** — Felony DWI defendants may be sentenced to a "jail term" in a county detention center electronic monitoring program, as that program is equivalent to official confinement. *State v. Frost*, 2003-NMCA-002, 133 N.M. 45, 60 P.3d 492, cert. denied, 133 N.M. 126, 61 P.3d 835.

**Concurrent jurisdiction** is that jurisdiction exercised by different courts, at the same time, over the same subject matter and within the same territory and wherein litigants may, in the first instance, report to either court indifferently. 1965 Op. Att'y Gen. No. 65-202.

**District and municipal courts can have jurisdiction over second offense.** — District courts, and also municipal courts if the charge arises under a municipal ordinance, have jurisdiction over second offense of driving while intoxicated. 1972 Op. Att'y Gen. No. 72-13.

**Magistrate courts have jurisdiction over second or subsequent offenses.** — The specific provision of this section (relating to magistrate courts having concurrent jurisdiction for first offenses) is no longer required to confer jurisdiction on the magistrate courts and it should not be read as a bar to magistrate courts' jurisdiction over second or subsequent offenses. 1975 Op. Att'y Gen. No. 75-45.

**Law reviews.** — For comment on Valencia v. Strayer, 73 N.M. 252, 387 P.2d 456 (1963); Garrett v. Howden, 73 N.M. 307, 387 P.2d 874 (1963), see 4 Nat. Resources J. 168 (1964).

For article, "A Different Kind of Symmetry," see 34 N.M.L. Rev. 263 (2004).

For article, "Death in the Desert: A New Look at the Involuntary Intoxication Defense in New Mexico," see 32 N.M.L. Rev. 243 (2002).

For article, " 'To Purify the Bar': A Constitutional Approach to Non-Professional Misconduct," see 5 Nat. Resources J. 299 (1965).

For comment, "Two-Tiered Test for Double Jeopardy Analysis in New Mexico," see 10 N.M.L. Rev. 195 (1979-80).

For annual survey of New Mexico criminal procedure, see 16 N.M.L. Rev. 25 (1986).

For annual survey of New Mexico criminal law and procedure, see 19 N.M.L. Rev. 655 (1990).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 296 to 300, 302, 303, 305 to 311, 375 to 380, 384.

Conflict between statutes and local regulations as to intoxication of driver, 21 A.L.R. 1212, 64 A.L.R. 993, 147 A.L.R. 522.

Arrest without warrant for driving automobile while intoxicated, 42 A.L.R. 1512, 49 A.L.R. 1400, 68 A.L.R. 1374, 142 A.L.R. 555.

Constitutionality and effect of statute relating to civil liability of person driving automobile while under influence of liquor, 56 A.L.R. 327.

Necessity and sufficiency of indictment for driving while intoxicated, 68 A.L.R. 1374.

Driving while intoxicated as reckless driving, where driving while intoxicated is a separate offense, 86 A.L.R. 1274, 52 A.L.R.2d 1337.

Admissibility and weight of evidence based on scientific test for intoxication or presence of alcohol in system, 127 A.L.R. 1513, 159 A.L.R. 209.

Degree or nature of intoxication for purposes of statute or ordinance making it a criminal offense to operate an automobile while in that condition, 142 A.L.R. 555.

Admissibility, in vehicle accident case, of evidence of opposing party's intoxication where litigant's pleading failed to allege such fact, 26 A.L.R.2d 359.

Admissibility of evidence showing plaintiff's antecedent intemperate habits, in personal injury motor vehicle accident action, 46 A.L.R.2d 103.

"Motor vehicle" within law against driving while intoxicated, 66 A.L.R.2d 1146.

Intoxication, unconsciousness, or mental incompetency of person as affecting his status as guest within automobile guest statute or similar common-law rule, 66 A.L.R.2d 1319.

Construction and application of statutes creating presumption or other inference of intoxication from specified percentages of alcohol present in system, 16 A.L.R.3d 748.

Right to trial by jury in criminal prosecution for driving while intoxicated or similar offense, 16 A.L.R.3d 1373.

Driving while under the influence or when addicted to use of drugs as criminal offense, 17 A.L.R.3d 815.

Liability based on entrusting automobile to one who is intoxicated or known to be excessive user of intoxicants, 19 A.L.R.3d 1175.

Application, to operation of motor vehicle on private property, of legislation making drunken driving a criminal offense, 29 A.L.R.3d 938.

Admissibility under state law of hospital record relating to intoxication or sobriety of patient, 80 A.L.R.3d 456.

What constitutes driving, operating or being in control of motor vehicle for purposes of driving while intoxicated statute or ordinance, 93 A.L.R.3d 7.

Duty of law enforcement officer to offer suspect chemical test under implied consent law, 95 A.L.R.3d 710.

Evidence of automobile passenger's blood-alcohol level as admissible in support of defense that passenger was contributorily negligent or assumed risk of automobile accident, 5 A.L.R.4th 1194.

Reckless driving as lesser included offense of driving while intoxicated or similar charge, 10 A.L.R.4th 1252.

Destruction of ampoule used in alcohol breath test as warranting suppression of result of test, 19 A.L.R.4th 509.

Drunk driving: motorist's right to private sobriety test, 45 A.L.R.4th 11.

Failure to restrain drunk driver as ground of liability of state or local government unit or officer, 48 A.L.R.4th 320.

Snowmobile operation as DWI or DUI, 56 A.L.R.4th 1092.

Validity, construction, and application of statutes directly proscribing driving with blood-alcohol level in excess of established percentage, 59 A.L.R.4th 149.

Horizontal gaze nystagmus test: use in impaired driving prosecution, 60 A.L.R.4th 1129.

Social host's liability for injuries incurred by third parties as a result of intoxicated guest's negligence, 62 A.L.R.4th 16.

Passenger's liability to vehicular accident victim for harm caused by intoxicated motor vehicle driver, 64 A.L.R.4th 272.

Driving while intoxicated: "choice of evils" defense that driving was necessary to protect life or property, 64 A.L.R.4th 298.

Cough medicine as "intoxicating liquor" under DUI statute, 65 A.L.R.4th 1238.

Horseback riding or operation of horse-drawn vehicle as within drunk driving statute, 71 A.L.R.4th 1129.

Operation of bicycle as within drunk driving statute, 73 A.L.R.4th 1139.

Operation of mopeds and motorized recreational two-, three- and four-wheeled vehicles as within scope of driving while intoxicated statutes, 32 A.L.R.5th 659.

Intoxication of automobile driver as basis for awarding punitive damages, 33 A.L.R.5th 303.

Applicability, to operation of motor vehicle on private property, of legislation making drunken driving a criminal offense, 52 A.L.R. 5th 655.

Admissibility of hospital records under Federal Business Records Act (28 USC § 1732(a)), 9 A.L.R. Fed. 457.

Assimilation, under assimilative crimes act (18 U.S.C.A. § 13), of state statutes relating to driving while intoxicated or under influence of alcohol, 175 A.L.R. Fed. 293.

61A C.J.S. Motor Vehicles §§ 625(1), 628.

Denial of accused’s request of initial contact with attorney – drunk driving cases. 109 A.L.R.5th 611.

Vertical gaze nystagmus test, use in impaired driving prosecution. 117 A.L.R.5th 491.

Admissibility and sufficiency of extrapolation evidence in DUI prosecutions. 119 A.L.R 5th. 379.

Excessiveness or inadequacy of damage awards against drunk drivers. 14 A.L.R.6th 263.

Claim of diabetic reaction or hypoglycemia as defense in prosecution for driving under influence of alcohol or drugs. 17 A.L.R.6th 757.

Validity, construction, and application of state "zero tolerance" laws relating to underage drinking and driving. 34 A.L.R.6th 623.

## 66-8-102.1. Guilty pleas; limitations.

Where the complaint or information alleges a violation of Section 66-8-102 NMSA 1978, any plea of guilty thereafter entered in satisfaction of the charges shall include at least a plea of guilty to the violation of one of the subsections of Section 66-8-102 NMSA 1978, and no other disposition by plea of guilty to any other charge in satisfaction of the charge shall be authorized if the results of a test performed pursuant to the Implied Consent Act [66-8-105 to 66-8-112 NMSA 1978] disclose that the blood or breath of the person charged contains an alcohol concentration of:

A. eight one hundredths or more; or

B. four one hundredths or more if the person charged is driving a commercial motor vehicle.

**History:** Laws 1982, ch. 102, § 2; 1984, ch. 72, § 4; 1993, ch. 66, § 8; 2003, ch. 51, § 11; 2003, ch. 90, § 4.

**ANNOTATIONS**

**The 2003 amendment,** effective March 28, 2003, added the Subsection A designation and added Subsection B.

**Duplicate amendments.** — Laws 2003, ch. 51, § 11 and Laws 2003, ch. 90, § 4 enacted identical amendments to 66-8-102.1 NMSA 1978. The section is set out as amended by Laws 2003, ch. 90, § 4. *See* 12-1-8 NMSA 1978.

**The 1993 amendment,** effective January 1, 1994, substituted "shall include" for "must include" near the beginning, inserted "or breath" following "blood", substituted the language beginning "an alcohol concentration" for "at least ten one hundredths of one percent by weight of alcohol" at the end, and made a minor stylistic change.

## 66-8-102.2. Municipal and county ordinances; unlawful alcohol concentration level for driving while under the influence of intoxicating liquor or drugs.

No municipal or county ordinance prohibiting driving while under the influence of intoxicating liquor or drugs shall be enacted that provides for an unlawful alcohol concentration level that is different than the alcohol concentration levels provided in Subsections C and D of Section 66-8-102 NMSA 1978.

**History:** Laws 1993, ch. 66, § 16.

## 66-8-102.3. Imposing a fee; interlock device fund created.

A. A fee is imposed on a person convicted of driving under the influence of intoxicating liquor or drugs in violation of Section 66-8-102 NMSA 1978 or adjudicated as a delinquent on the basis of Subparagraph (a) of Paragraph (1) of Subsection A of Section 32A-2-3 NMSA 1978 or a person whose driver's license is revoked pursuant to the provisions of the Implied Consent Act [66-8-105 to 66-8-112 NMSA 1978], in an amount determined by rule of the traffic safety bureau of the department of transportation not to exceed one hundred dollars ($100) but not less than fifty dollars ($50.00) for each year the person is required to operate only vehicles equipped with an ignition interlock device in order to ensure the solvency of the interlock device fund. The fee shall not be imposed on an indigent person.

B. The "interlock device fund" is created in the state treasury. The fee imposed pursuant to Subsection A of this section shall be collected by the motor vehicle division of the taxation and revenue department and deposited in the interlock device fund.

C. All money in the interlock device fund is appropriated to the traffic safety bureau of the department of transportation to cover part of the costs of installing, removing and leasing ignition interlock devices for indigent people who are required, pursuant to convictions under Section 66-8-102 NMSA 1978 or adjudications on the basis of Subparagraph (a) of Paragraph (1) of Subsection A of Section 32A-2-3 NMSA 1978 or driver's license revocations pursuant to the provisions of the Implied Consent Act or as a condition of parole, to install those devices in their vehicles. Provided that money is available in the interlock device fund, the traffic safety bureau shall pay, for one vehicle per offender, up to fifty dollars ($50.00) for the cost of installation, up to fifty dollars ($50.00) for the cost of removal and up to thirty dollars ($30.00) monthly for verified active usage of the interlock device. The traffic safety bureau shall not pay any amount above what an offender would be required to pay for the installation, removal or usage of an interlock device.

D. Indigency shall be determined by the traffic safety bureau based on proof of enrollment in one or more of the following types of public assistance:

(1) temporary assistance for needy families;

(2) general assistance;

(3) the supplemental nutritional assistance program, also known as "food stamps";

(4) supplemental security income;

(5) the federal food distribution program on Indian reservations; or

(6) other criteria approved by the traffic safety bureau.

E. Any balance remaining in the interlock device fund shall not revert to the general fund at the end of any fiscal year.

F. The interlock device fund shall be administered by the traffic safety bureau of the department of transportation. No more than ten percent of the money in the interlock device fund in any fiscal year shall be expended by the traffic safety bureau of the department of transportation for the purpose of administering the fund.

**History:** Laws 2002, ch. 82, § 2; 2003, ch. 92, § 1; 2005, ch. 269, § 6; 2006, ch. 20, § 1; 2007, ch. 324, § 2; 2010, ch. 29, § 2.

## ANNOTATIONS

**Cross references.** — For Ignition Interlock Licensing Act, *see* 66-5-501 NMSA 1978.

**The 2010 amendment,** effective July 1, 2010, in Subsection A, in the first sentence, after "convicted of driving", deleted "while" and after "liquor or drugs", deleted "pursuant to" and added "in violation of"; deleted the former third and fourth sentences, which provided that the fee imposed by Subsection A shall be collected by the vendor of the ignition interlock device and that the vendor shall remit the fee to the traffic safety bureau; in Subsection B, in the second sentence, after "this section shall be", deleted "distributed to the fund by the traffic safety bureau of the department of transportation" and added the remainder of the sentence; in Subsection C, in the first sentence, after "department of transportation to cover", added "part of"; after "costs of installing", deleted "and"; and after "removing and", deleted "one-half of the cost of"; and added the remainder of Subsection C; in Subsection D, in the introductory sentence, after "determined by the", deleted "court, the parole board or a probation and parole officer" and added the remainder of the sentence, including Paragraphs (1) through (6); and in Subsection F, in the second sentence, after "No more than", deleted "five" and added "ten".

**The 2007 amendment,** effective June 15, 2007, provided that indigency may be determined by the parole board or a probation and parole officer.

**The 2006 amendment,** effective March 2, 2006, changed the administrative authority for the interlock device fund from the department of finance and administration to the traffic safety bureau of the department of transportation and provided in Subsection A that the fee shall not be imposed on an indigent person.

**The 2005 amendment,** effective June 17, 2005, in Subsection A, deleted the former provision which imposed a fee on all persons who provide ignition interlock devices, imposed a fee on a person adjudicated as a delinquent on the basis of Section 32A-2-3A(1)(a) NMSA 1978, deleted the former provision which specified the fee to be ten percent of the amount charged on the ignition interlock device, added the provision that the fee shall be established by rule of the department in an amount of not more that $100 and not less than $50 per year, that the fee shall be collected and remitted to the

department by the vendor of the ignition interlock device; provided in Subsection C that the fund shall be used to cover the costs of removing and one half the cost of leasing ignition interlock devices for indigent persons including indigent persons who are required to use the devices pursuant to an adjudication on the basis of Section 32A-2-3A(1)(a) NMSA 1978; deleted the former provision of Subsection C that the fund may be used only to cover the cost of leasing ignition interlock devices for the initial four months; and provided in Subsection E that not more that five percent of the fund in any fiscal year shall be expended for administering the fund.

**The 2003 amendment,** effective March 28, 2003, in Subsection A, substituted "a person" for "persons" following "interlock devices to", inserted "or a person whose driver's license is revoked pursuant to the provisions of the Implied Consent Act" following "Section 66-8-102 NMSA 1978", inserted "install, service and remove" following "charged to lease", substituted "for a person" for "to a person" following "ignition interlock device", substituted "Section 66-8-102 NMSA 1978 or whose driver's license is revoked pursuant to the provisions of the Implied Consent Act" for "that section" following "convicted pursuant to"; in Subsection C, inserted "for the initial four months and removing" preceding "ignition interlock devices", substituted "for indigent" for "to indigent" following "ignition interlock devices", and inserted "or driver's license revocations pursuant to the provisions of the Implied Consent Act" following "Section 66-8-102 NMSA 1978".

## 66-8-102.4. Uniform police reports and procedures for DWI arrests.

A. The department of public safety, in collaboration with the motor vehicle division of the taxation and revenue department and the traffic safety bureau of the department of transportation, shall develop and periodically review and update standard arrest reports and procedures to be used by law enforcement officers when making an arrest for a violation of the provisions of Section 66-8-102 NMSA 1978 or similar municipal or county ordinances.

B. A law enforcement officer making an arrest for a violation of the provisions of Section 66-8-102 NMSA 1978 or of similar municipal or county ordinances shall use the standard arrest reports and procedures developed and approved by the department of public safety in accordance with the provisions of Subsection A of this section.

**History:** Laws 2005, ch. 269, § 8.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 269 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

## 66-8-102.5. Driving while intoxicated with a minor in the vehicle; penalty.

A. Driving while intoxicated with a minor in the vehicle consists of a person committing a violation of Section 66-8-102 NMSA 1978 when a minor is in the vehicle and when the minor does not suffer great bodily harm or death. Whoever commits driving while intoxicated with a minor in the vehicle is guilty of a misdemeanor.

B. A charge for a violation of Subsection A of this section shall be in addition to a charge for the violation of Section 66-8-102 NMSA 1978 and shall be punished as a separate offense.

C. As used in this section, "minor" means an individual who is younger than thirteen years of age.

**History:** Laws 2019, ch. 79, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2019, ch. 79, § 2 made Laws 2019, ch. 79, § 1 effective July 1, 2019.

**General/specific statute rule was inapplicable where facts supported both a charge of DWI with a minor and child abuse by endangerment.** — In consolidated cases, where defendants were driving while intoxicated with minors in their vehicles, and where both defendants were charged with child abuse by endangerment, but where both defendants moved to dismiss those charges, arguing that NMSA 1978, § 66-8-102.5 displaced the prosecutor's charging discretion under the general/specific statute rule, the district court improperly limited prosecutorial charging discretion by dismissing the child abuse by endangerment charges, because while the child abuse and DWI with a minor statute share similar purposes and histories, there are differences in the conduct each criminalizes, and the plain language of § 66-8-102.5 provides no indication that the legislature intended it to always be charged by a prosecutor instead of child abuse by endangerment. *State v. Saltwater*, 2024-NMCA-018, cert. denied.

## 66-8-103. [Blood-alcohol tests directed by police, judicial or probation officer; persons qualified to perform tests; relief from civil and criminal liability.]

Only a physician, licensed professional or practical nurse or laboratory technician or technologist employed by a hospital or physician shall withdraw blood from any person in the performance of a blood-alcohol test. No such physician, nurse, technician or technologist who withdraws blood from any person in the performance of a blood-alcohol test that has been directed by any police officer, or by any judicial or probation officer, shall be held liable in any civil or criminal action for assault, battery, false imprisonment or any conduct of any police officer, except for negligence, nor shall any person assisting in the performance of such a test, or any hospital wherein blood is withdrawn in the performance of such a test, be subject to civil or criminal liability for

assault, battery, false imprisonment or any conduct of any police officer, except for negligence.

**History:** 1953 Comp., § 64-22-2.1, enacted by Laws 1967, ch. 160, § 1; recompiled as 1953 Comp., § 64-8-103, by Laws 1978, ch. 35, § 511.

## ANNOTATIONS

**Purpose of section** is two-fold: (1) to insure the safety and protection of the person being subjected to the test, and (2) to insure reliability of the sample. *Steere Tank Lines, Inc. v. Rogers*, 1978-NMSC-049, 91 N.M. 768, 581 P.2d 456.

**State satisfied foundational burden of showing method of drawing blood.** — Where a police officer testified that the officer obtained a search warrant to extract defendant's blood; the blood was extracted at a medical center by a registered nurse; a SLD-approved blood collection kit was used to extract the blood; the officer observed the blood draw; the officer and the nurse signed the completed report of blood alcohol analysis that went with the collection kit; the nurse wore a uniform and had a medical center identification tag which included the nurse's picture, name and title; the nurse used the contents of the collection kit to draw blood, including a non-alcohol based swab; the nurse used the SLD-provided vacuum tubes to collect blood and gave the vacuum tubes to the officer; and the officer labeled and sealed the vacuum tubes and mailed the form and the blood samples to the state laboratory division, the evidence satisfied the state's foundational burden for admission of the report sufficient to withstand defendant's objection to the admission of the report on the ground that the state did not establish the propriety of the blood draw and the qualifications of the blood drawer. *State v. Nez*, 2010-NMCA-092, 148 N.M. 914, 242 P.3d 481, cert. denied, 2010-NMCERT-009, 149 N.M. 49, 243 P.3d 753.

**The state met its foundational burden of establishing that the blood drawer was qualified.** — Where defendant was arrested for driving while under the influence of intoxicating liquor or drugs, and where defendant consented to a blood test which indicated that he had a blood alcohol content of .08, and where defendant claimed that the evidence was insufficient to establish his blood was drawn by an authorized individual, the district court did not abuse its discretion in finding the officer's testimony sufficient to satisfy the state's foundational burden of establishing that the blood drawer was qualified where the officer testified that he was present at the hospital during the blood draw, that he provided hospital staff a blood draw kit approved by the state laboratory division, that he ensured the person who drew defendant's blood was certified by the hospital to draw blood, and saw the blood draw performed by a person he knew was either a technician or a certified nurse employed by the hospital. *State v. Franklin*, 2020-NMCA-016.

**Federal claims.** — Where a nurse withdrew an arrested motorist’s blood for a blood-alcohol test at the behest of the ostensibly legal order of a police officer, the nurse’s actions were not unreasonable and hence not a violation of the arrested motorist’s

Fourth Amendment rights, and therefore summary judgment in the nurse's favor was appropriate on the arrested motorist's 42 U.S.C. § 1983 claims against her. *Marshall v. Columbia Lea Reg'l Hosp.*, 345 F.3d 1157 (10th Cir. 2003), *appeal after remand*, 474 F.3d 733 (10th Cir. 2007).

**Blood sample taken from corpse.** — Although there may have been other techniques available for withdrawing a blood sample or other fluids which could have been tested for alcohol, and nothing in the record indicated that the procedure used could have, or did, result in an unreliable blood sample, this section does not apply to a blood sample taken from a corpse by a deputy medical examiner. *Steere Tank Lines, Inc. v. Rogers*, 1978-NMSC-049, 91 N.M. 768, 581 P.2d 456.

**An emergency medical technician is not qualified to perform blood draws under the Implied Consent Act.** — Where defendant was charged with causing great bodily harm by vehicle while driving under the influence of alcohol and drugs, the district court did not err in granting defendant's motion to suppress the results of the blood test on the grounds that the emergency medical technician (EMT) was not qualified to perform blood draws under this section, because the EMT did not satisfy any of the categories that are listed as the only ones qualified to draw blood samples under the Implied Consent Act. *State v. Garcia*, 2016-NMCA-044, cert. granted.

**"Laboratory technician" construed.** — In order for a medical professional to qualify as a "laboratory technician" for the purposes of performing legal blood draws, the person must be employed by a hospital or physician to perform blood draws, trained to perform legal blood draws, and have on-the-job experience in doing so. *State v. Adams*, 2022-NMSC-008, *aff'g* 2019-NMCA-043, 447 P.3d 1142.

**EMTs, employed by a hospital or physician and who possess proper training and experience in drawing blood, are authorized to perform legal blood draw tests as a "laboratory technician."** — Where defendant was arrested for driving while under the influence of intoxicating liquor or drugs, and where the arresting officer, after transporting defendant to the San Juan regional medical center, requested that an emergency department technician, who was also licensed as an EMT, draw defendant's blood using a scientific laboratory division blood draw kit, and where the defendant moved to suppress the test results on the basis that the EMT was not qualified to draw blood under this section, the district court erred in granting defendant's motion, because EMTs who, along with their certification, have the training and experience in the skill of drawing blood to perform legal blood draw tests and who are employed by a hospital or physician to do so, furthers the purpose of the statute to ensure the safety of the patient and the reliability of the blood sample, and in this case, the EMT was employed by the San Juan regional medical center, one of her duties was to perform legal blood-alcohol blood draws at the request of law enforcement personnel, was taught how to perform blood draws by other nurses and technicians, and completed a six-week orientation period during which another employee supervised her work. *State v. Adams*, 2022-NMSC-008, *aff'g* 2019-NMCA-043, 447 P.3d 1142.

**"Laboratory technician" defined.** — An individual qualifies as a laboratory technician for purposes of this section so long as a hospital or physician determined that the employee, despite the employee's official title, was qualified to perform blood draws in accordance with accepted medical standards based on the employee's demonstrable skills, training, and experience. *State v. Adams*, 2019-NMCA-043, 447 P.3d 1142, *aff'd by* 2022-NMSC-008.

**Emergency medical technician qualified as a laboratory technician.** — Where defendant was arrested for driving while intoxicated, and where defendant consented to a blood draw pursuant to the Implied Consent Act (Act), 66-8-105 to 66-8-112 NMSA 1978, which was performed by an emergency medical technician (EMT) employed by a hospital, the district court abused its discretion in excluding the results of defendant's blood test on the basis that the EMT who drew defendant's blood was not authorized to do so under the Act, because although an EMT license alone was not sufficient to qualify the EMT to draw blood pursuant to 66-8-103 NMSA 1978, the EMT's additional experience and training qualified her to do so as a laboratory technician or a phlebotomist under this section. *State v. Adams*, 2019-NMCA-043, 447 P.3d 1142, *aff'd by* 2022-NMSC-008.

**Certified phlebotomist was a laboratory technician for purposes of the Implied Consent Act.** — Where defendant was arrested for DWI, agreed to a blood test and was transported to a hospital where a certified phlebotomist drew his blood for testing, and where defendant moved to exclude his blood test results, asserting the evidence was insufficient to demonstrate the testing was conducted in accordance with § 66-8-103 NMSA 1978, the district court did not abuse its discretion in denying defendant's motion and in concluding that the certified phlebotomist was qualified to draw blood as a laboratory technician, because the phlebotomist in this case completed a phlebotomy course from eastern New Mexico university, received a certificate demonstrating that she was a certified phlebotomist, was hired as a clinical lab assistant to perform blood draws, received additional training in blood draw procedures, and performed approximately fifty blood draws during each of her shifts. The phlebotomist in this case had the requisite training and experience to draw defendant's blood in accordance with the Implied Consent Act. *State v. Warford*, 2022-NMCA-034.

**Certified phlebotomist was "employed" by a hospital within the meaning of the Implied Consent Act.** — Where defendant was arrested for DWI, agreed to a blood test and was transported to a hospital where a certified phlebotomist drew his blood for testing, and where defendant moved to exclude his blood test results, asserting that even if the phlebotomist was deemed a technician or technologist, she was not qualified to perform his blood draw because she was not employed by a hospital or physician as specified in § 66-8-103 NMSA 1978, the district court did not abuse its discretion in denying defendant's motion to exclude, because the hospital contracted with the company that employed the phlebotomist, which hired her to perform blood draws, trained her in blood-draw procedures and determined that she was qualified to perform blood draws, including legal blood-draw tests; the phlebotomist was an employee of the

hospital for the purposes of the Implied Consent Act. *State v. Warford*, 2022-NMCA-034.

**Nurse not required to be employed by hospital or physician.** — This section does not require that the licensed professional nurse or registered nurse be employed by a hospital or physician in order to withdraw blood for blood-alcohol tests. The requirement of employment by a hospital or physician applies only to "technologists." *State v. Wiberg*, 1988-NMCA-022, 107 N.M. 152, 754 P.2d 529, cert. denied, 107 N.M. 106, 753 P.2d 352.

**Technologist need not be licensed.** — In enacting this section, the legislature did not intend that a technologist must be licensed in order to be authorized to withdraw blood, since there were no provisions for the licensing of technologists. *State v. Trujillo*, 1973-NMCA-076, 85 N.M. 208, 510 P.2d 1079.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Intoxication from specified percentages of alcohol present in system, construction and application of statutes creating presumption or other inference, 16 A.L.R.3d 748.

Duty of law enforcement officer to offer suspect chemical test under implied consent law, 95 A.L.R.3d 710.

Evidence of automobile passenger's blood-alcohol level as admissible in support of defense that passenger was contributorily negligent or assumed risk of automobile accident, 5 A.L.R.4th 1194.

## 66-8-104. Blood-alcohol tests; police, judicial or probation officer unauthorized to make arrest or direct test except in performance of official duties authorized by law.

Nothing in Sections 66-8-103 or 66-8-104 NMSA 1978 is intended to authorize any police officer, or any judicial or probation officer, to make any arrest or to direct the performance of a blood-alcohol test, except in the performance of his official duties and as otherwise authorized by law.

**History:** 1953 Comp., § 64-8-104, enacted by Laws 1978, ch. 35, § 512.

**ANNOTATIONS**

**Cross references.** — For promulgation and approval of methods to test persons operating motor vehicle under influence of drugs or alcohol, *see* 24-1-22 NMSA 1978.

## 66-8-105. Implied Consent Act; short title.

Sections 66-8-105 through 66-8-112 NMSA 1978 may be cited as the "Implied Consent Act."

**History:** 1953 Comp., § 64-8-105, enacted by Laws 1978, ch. 35, § 513.

## ANNOTATIONS

**Cross references.** — For limited driving privilege after revocation, *see* 66-5-35 NMSA 1978.

**Implied Consent Act is intended** to deter driving while intoxicated and to aid in discovering and removing the intoxicated driver from the highway. *McKay v. Davis*, 1982-NMSC-122, 99 N.M. 29, 653 P.2d 860; *State v. Copeland*, 1986-NMCA-083, 105 N.M. 27, 727 P.2d 1342, cert. denied, 104 N.M. 702, 726 P.2d 856.

**Constitutionality of punishment for refusing to submit to a warrantless blood draw under the Implied Consent Act.** — The fourth amendment to the United States Constitution does not support an enhanced criminal penalty based upon a defendant's refusal to consent to a blood test for the presence of drugs, and therefore 66-8-102(D)(3) NMSA 1978 is unconstitutional to the extent violation of it is predicated on refusal to consent to a blood draw to test for the presence of any drug in the defendant's blood. *State v. Storey*, 2018-NMCA-009, cert. denied.

**Subsequent consent rule adopted.** — A subsequent change of mind can nullify a driver's initial refusal to take a blood-alcohol test and thus can cure an initial refusal. A driver will be permitted to rescind this initial refusal if the driver can prove the five elements of the test. The test standard is measured by the driver's reasonable ability to comprehend the situation and encourages the driver to recant almost immediately, but never after more than a matter of minutes. *In re Suazo*, 1994-NMSC-070, 117 N.M. 785, 877 P.2d 1088.

**Act does not govern when law enforcement agencies not involved.** — The Implied Consent Act does not govern the taking of blood samples when law enforcement agencies are not involved. It does not protect against an intrusion on the person that is not by, or directed by, a law enforcement officer. Nothing in the act suggests any legislative antipathy to taking and testing blood samples of drivers for purely medical reasons, nor does anything in the act indicate that the legislature would consider it somehow unfair to use the results of such tests in a prosecution of the driver. *State v. Johnston*, 1989-NMCA-063, 108 N.M. 778, 779 P.2d 556, cert. denied, 108 N.M. 771, 779 P.2d 549.

**Estoppel and prior license revocation hearing.** — Where the court reversed the revocation of defendant's driver's license because the breath test given to defendant was not administered pursuant to the provisions of the Implied Consent Act, the district court did not err in deciding the state was not precluded from introducing the breath test

results during the subsequent criminal proceeding. *State v. Bishop*, 1992-NMCA-034, 113 N.M. 732, 832 P.2d 793, cert. denied, 113 N.M. 690, 831 P.2d 989.

**Permissible search of a person's blood may arise from a valid search warrant.** — A constitutionally permissible search of a person's blood may arise from an arrest pursuant to the Implied Consent Act or a valid search warrant supported by probable cause. *State v. Garnenez*, 2015-NMCA-022, cert. denied, 2015-NMCERT-001.

Where defendant was charged with vehicular homicide and DWI following a crash that killed two people, and where the officer detected an odor of alcohol on defendant, noticed that defendant had a flushed complexion and confused speech, the officer questioned defendant's ability to give consent to a blood draw pursuant to the Implied Consent Act due to defendant's condition from the injuries and the medications in her system; the officer instead obtained a search warrant, based on probable cause, to draw defendant's blood; court of appeals held that where probable cause exists, refusal under the Implied Consent Act is not required before an officer may obtain a search warrant for a blood test, and that a valid search warrant is a permissible alternative to proceeding under the Implied Consent Act in order to perform a blood draw. *State v. Garnenez*, 2015-NMCA-022, cert. denied, 2015-NMCERT-001.

**Implied consent laws can no longer provide that a driver impliedly consents to a blood draw.** — The fourth amendment permits warrantless breath tests incident to legal arrests because noninvasive breath tests only slightly impact a subject's privacy and because the state has an interest in testing breath alcohol content to maintain highway safety and deter drunk driving, but blood tests bear too heavily on a subject's privacy interests to permit the state to seize warrantless samples at all DWI stops. Therefore, when a subject does not consent to a blood draw, officers must obtain a warrant or establish probable cause and exigent circumstances to justify a warrantless search. *State v. Vargas*, 2017-NMSC-029, *aff'g* 2017-NMCA-023, 389 P.3d 1080.

**A driver cannot be subjected to criminal penalties for refusing to submit to a warrantless blood draw.** — Where defendant consented to provide two breath test samples at a DWI checkpoint, but refused to submit to a blood test, her conviction for aggravated DWI was improper, because blood tests bear too heavily on a subject's privacy interests to permit the state to seize warrantless samples at all DWI stops, and when a subject does not consent to such a search, officers must obtain a warrant or establish probable cause and exigent circumstances to justify a warrantless search. *State v. Vargas*, 2017-NMSC-029, *aff'g* 2017-NMCA-023, 389 P.3d 1080.

**A defendant may not be held criminally liable for refusing to submit to a warrantless blood test based on implied consent.** — Where defendant was charged with aggravated driving while intoxicated, and where defendant's DWI charge was aggravated based on her refusal of a warrantless blood test, defendant's conviction for aggravated DWI was reversed because a driver may be deemed to have consented to a warrantless blood test under a state implied consent statute, but the driver may not be subject to a criminal penalty for refusing to submit to such a test, and therefore where

defendant was threatened with an unlawful search, her refusal to submit to the search cannot be the basis for aggravating her DWI sentence. *State v. Vargas*, 2017-NMCA-023, cert. granted.

**District court must assess the voluntariness of consent to a blood draw when given in response to threats of heightened criminal penalties for refusal.** — Where defendant was charged with driving while under the influence of intoxicating liquor, and where the evidence at trial established that defendant submitted to a blood test which indicated that defendant had a blood alcohol content of .08, and where there was conflicting evidence at trial whether the arresting officer advised defendant that his failure to consent could cause defendant to face enhanced criminal penalties, and where the district court failed to make a determination whether the criminal penalty portion of the implied consent advisory was read to defendant prior to his consent, the case was remanded because a trial court must assess the voluntariness of the consent in light of the totality of the circumstances, including an improper implied consent advisory. *State v. Franklin*, 2020-NMCA-016.

**Law reviews.** — For comment, "Implied Consent in New Mexico," see 10 Nat. Resources J. 378 (1970).

For note, "Constitutional Law - Criminal Law - Evidence - Admissibility of a Motorist's Refusal to Take a Breath-Alcohol Test: McKay v. Davis," see 14 N.M.L. Rev. 257 (1984).

For note, "New Mexico Adopts a Subsequent Consent Rule for Motorists Who Refuse to Submit to Chemical Testing: *In re Suazo,*" 25 N.M.L. Rev. 261 (1995).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 305 to 308, 377, 378.

Duty of law enforcement officer to offer suspect chemical test under implied consent law, 95 A.L.R.3d 710.

61A C.J.S. Motor Vehicles § 633(2), (8).

## 66-8-106. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1990, ch. 120, § 45 repealed 66-8-106 NMSA 1978, as enacted by Laws 1978, ch. 35, § 514, relating to definition of "director", effective July 1, 1990. For provisions of former section, *see* the 1989 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* 66-1-4.4 NMSA 1978.

## 66-8-107. Implied consent to submit to chemical test.

A. Any person who operates a motor vehicle within this state shall be deemed to have given consent, subject to the provisions of the Implied Consent Act [66-8-105 to 66-8-112 NMSA 1978], to chemical tests of his breath or blood or both, approved by the scientific laboratory division of the department of health pursuant to the provisions of Section 24-1-22 NMSA 1978 as determined by a law enforcement officer, or for the purpose of determining the drug or alcohol content of his blood if arrested for any offense arising out of the acts alleged to have been committed while the person was driving a motor vehicle while under the influence of an intoxicating liquor or drug.

B. A test of blood or breath or both, approved by the scientific laboratory division of the department of health pursuant to the provisions of Section 24-1-22 NMSA 1978, shall be administered at the direction of a law enforcement officer having reasonable grounds to believe the person to have been driving a motor vehicle within this state while under the influence of intoxicating liquor or drug.

**History:** 1953 Comp., § 64-8-107, enacted by Laws 1978, ch. 35, § 515; 1979, ch. 71, § 8; 1985, ch. 178, § 3; 1985, ch. 187, § 1; 1993, ch. 66, § 9.

## ANNOTATIONS

**The 1993 amendment,** effective January 1, 1994, inserted "or both, approved by the scientific laboratory division of the department of health pursuant to the provisions of Section 24-1-22 NMSA 1978" in Subsections A and B, substituted "alcohol content" for "alcoholic content" in Subsection A, and deleted "any" preceding "drug" at the end of Subsection A.

**Applicability.** — Subsection A of Section 66-8-107 NMSA 1978 applies to a sixteen-year-old person who drives a vehicle in New Mexico. *State v. Randy J.*, 2011-NMCA-105, 150 N.M. 683, 265 P.3d 734, cert. denied, 2011-NMCERT-009, 269 P.3d 903.

**Constitutionality of punishment for refusing to submit to a warrantless blood draw under the Implied Consent Act.** — The fourth amendment to the United States constitution does not support an enhanced criminal penalty based upon a defendant's refusal to consent to a blood test for the presence of drugs, and therefore 66-8-102(D)(3) NMSA 1978 is unconstitutional to the extent violation of it is predicated on refusal to consent to a blood draw to test for the presence of any drug in the defendant's blood. *State v. Storey*, 2018-NMCA-009, cert. denied.

Where defendant was charged with aggravated driving while under the influence of intoxicating drugs, and where defendant's DUI charge was aggravated based on his refusal to consent to a warrantless blood test, defendant's conviction for aggravated DUI was reversed because the fourth amendment does not support an enhanced criminal penalty based upon a defendant's refusal to consent to a blood test for the presence of drugs, and therefore a driver cannot be criminally punished for his refusal to submit to a blood test after being arrested on suspicion of driving under the influence of intoxicating liquor or drugs. *State v. Storey*, 2018-NMCA-009, cert. denied.

**Compliance with regulations.** — Showing that machine had been calibrated within seven days previous to test of defendant was sufficient compliance with regulation requiring calibration every seven days for admissibility purposes. *State v. Montoya*, 1999-NMCA-001, 126 N.M. 562, 972 P.2d 1153.

**Termination of test.** — When a subject is willing to provide breath samples, it is incumbent upon the officer administering the test to comply with applicable scientific laboratory division regulations, which require that multiple breath samples be taken unless the test subject declines or is physically incapable of consent, by continuing the test to its required conclusion and the inability of the subject to blow into the breath test machine is not incapacity to consent to a test. *State v. Ybarra*, 2010-NMCA-063, 148 N.M. 373, 237 P.3d 117.

Where defendant consented to take a breath-alcohol test; the first sample registered .22 grams of alcohol; defendant had difficulty giving enough breath on the first test; after defendant indicated that defendant had asthma and requested the use of an inhaler, the officer was concerned whether defendant would be able to give a second sample; because defendant was in handcuffs, the officer held defendant's inhaler for defendant to use; a second breath sample resulted in the machine registering an error message indicating "Range Exceeded"; the officer decided to terminate the testing and not to obtain a blood draw; there was no evidence that defendant was unable to complete a breath test or that the inhaler had any effect on the test machine; and the scientific laboratory division regulations required multiple breath samples be taken unless the test subject declined or was physically incapable of consent, the officer's termination of the test was not justified and the results of the first breath sample were not admissible. *State v. Ybarra*, 2010-NMCA-063, 148 N.M. 373, 237 P.3d 117.

**A defendant is not entitled to Miranda warnings prior to being advised** and tested pursuant to the Implied Consent Act. *City of Rio Rancho v. Mazzei*, 2010-NMCA-054, 148 N.M. 553, 239 P.3d 149, cert. denied, 2010-NMCERT-005, 148 N.M. 574, 240 P.3d 1048.

**Implied consent laws can no longer provide that a driver impliedly consents to a blood draw.** — The fourth amendment permits warrantless breath tests incident to legal arrests because noninvasive breath tests only slightly impact a subject's privacy and because the state has an interest in testing breath alcohol content to maintain highway safety and deter drunk driving, but blood tests bear too heavily on a subject's privacy interests to permit the state to seize warrantless samples at all DWI stops. Therefore, when a subject does not consent to a blood draw, officers must obtain a warrant or establish probable cause and exigent circumstances to justify a warrantless search. *State v. Vargas*, 2017-NMSC-029, *aff'g* 2017-NMCA-023, 389 P.3d 1080.

**A driver cannot be subjected to criminal penalties for refusing to submit to a warrantless blood draw.** — Where defendant consented to provide two breath test samples at a DWI checkpoint, but refused to submit to a blood test, her conviction for aggravated DWI was improper, because blood tests bear too heavily on a subject's

privacy interests to permit the state to seize warrantless samples at all DWI stops, and when a subject does not consent to such a search, officers must obtain a warrant or establish probable cause and exigent circumstances to justify a warrantless search. *State v. Vargas*, 2017-NMSC-029, *aff'g* 2017-NMCA-023, 389 P.3d 1080.

**Valid consent.** — Where defendant was arrested for DWI at a hospital; after defendant's arrest, defendant was asked numerous times if defendant would consent to a blood draw and defendant refused; and after defendant was released from the hospital emergency room, the arresting officer explained to defendant that if defendant did not consent to the blood draw, defendant would be charged with aggravated DWI and the consequences of a conviction; defendant then consented to a blood draw; and defendant was not forcibly tested or coerced to drive a vehicle, defendant's consent to the blood draw was voluntary. *State v. Slayton*, 2009-NMSC-054, 147 N.M. 340, 223 P.3d 337.

**Use of unsynchronized time devices to determine the deprivation period.** — Where the arresting officer determined the time of the beginning of the deprivation period by the computer-aided dispatch system and determined the time of the end of the deprivation period by the clock on the Intoxilyzer machine; and the arresting officer testified that the two time devices were not synchronized and that, based on the officer's experience, the time on the two devices were very close if not to the same minute, the court did not abuse its discretion in admitting defendant's breath-alcohol test results into evidence. *State v. Thompson*, 2009-NMCA-076, 146 N.M. 663, 213 P.3d 813, cert. denied, 2009-NMCERT-006, 146 N.M. 733, 215 P.3d 42.

**Consent to blood test.** — Where police officer advised defendant of the Implied Consent Act, defendant asked to speak to an attorney, the officer then advised defendant that he did not have a right to speak to an attorney under the Implied Consent Act, and defendant thereafter consented to the blood draw, the court properly concluded that defendant did not refuse consent or refuse the blood draw. *State v. Ross*, 2007-NMCA-126, 142 N.M. 597, 168 P.3d 169, cert. granted, 2007-NMCERT-009, 142 N.M. 715, 169 P.3d 408.

**Implied consent violates neither due process nor equal protection.** — Implied Consent Act (Sections 66-8-105 to 66-8-112 NMSA 1978), framed upon the premise that when a person obtains a license to operate a motor vehicle, he impliedly consents to the sobriety test, violates neither due process nor equal protection. *In re McCain*, 1973-NMSC-023, 84 N.M. 657, 506 P.2d 1204.

**Double jeopardy does not bar DWI prosecution after license revocation.** — An administrative driver's license revocation under the Implied Consent Act does not constitute "punishment" for purposes of the Double Jeopardy Clause; thus, the state is not barred from prosecuting an individual for driving under the influence (DWI) even though the individual has been subjected to an administrative hearing for driver's license revocation based on the same offense. *State ex rel. Schwartz v. Kennedy*, 1995-NMSC-069, 120 N.M. 619, 904 P.2d 1044.

**Provisions of Implied Consent Act in essence declare** that the driver of a motor vehicle in this state impliedly consents to a blood alcohol test, when arrested for any offense allegedly committed while under the influence of intoxicating liquor, which implied consent cannot be withdrawn under certain circumstances, and upon refusal, no test shall be administered, but the driver's license can be revoked. *State v. Richerson*, 1975-NMCA-027, 87 N.M. 437, 535 P.2d 644, cert. denied, 87 N.M. 450, 535 P.2d 657.

**Subsequent consent rule adopted.** — A subsequent change of mind can nullify a driver's initial refusal to take a blood-alcohol test and thus can cure an initial refusal. A driver will be permitted to rescind this initial refusal if the driver can prove the five elements of the test. The test standard is measured by the driver's reasonable ability to comprehend the situation and encourages the driver to recant almost immediately, but never after more than a matter of minutes. *In re Suazo*, 1994-NMSC-070, 117 N.M. 785, 877 P.2d 1088.

**Lawful arrest is essential introductory step to implied consent provisions.** Results adduced from sobriety tests not preceded by such an arrest or by actual consent are condemned and held to be inadmissible evidence, and the trial court erred in not suppressing the results of the defendant's blood alcohol test taken without his consent and while he was not under arrest under the Implied Consent Act (Sections 66-8-105 to 66-8-112 NMSA 1978). *State v. Richerson*, 1975-NMCA-027, 87 N.M. 437, 535 P.2d 644, cert. denied, 87 N.M. 450, 535 P.2d 657.

In general, the Implied Consent Act requires that in order to be tested a suspect must first be placed under arrest. An exception to requiring a formal arrest prior to administration of a blood alcohol test is when the defendant is unconscious. *State v. Watchman*, 1991-NMCA-010, 111 N.M. 727, 809 P.2d 641, cert. denied, 111 N.M. 529, 807 P.2d 227, *overruled in part on other grounds by State v. Hosteen*, 1996-NMCA-084, 122 N.M. 228, 923 P.2d 595.

**Refusal to take test.** — By failing to submit to a breath test requested by the police officer, the defendant's actions constituted a refusal under the law, irrespective of his offer to take the test on another machine at the police station. *Fugere v. State Taxation & Revenue Dep't*, 1995-NMCA-040, 120 N.M. 29, 897 P.2d 216, cert. denied, 119 N.M. 771, 895 P.2d 671.

A motorist cannot refuse to take a chemical test of breath or blood designated by law enforcement merely because he believes such tests are unreliable. *Fugere v. State Taxation & Revenue Dep't*, 1995-NMCA-040, 120 N.M. 29, 897 P.2d 216, cert. denied, 119 N.M. 771, 895 P.2d 671.

A motorist does not have a due process right to choose the chemical test administered to him even though he believes that the test chosen by the police officer is unreliable. *Fugere v. State Taxation & Revenue Dep't*, 1995-NMCA-040, 120 N.M. 29, 897 P.2d 216, cert. denied, 119 N.M. 771, 895 P.2d 671.

**A defendant may not be held criminally liable for refusing to submit to a warrantless blood test based on implied consent.** — Where defendant was charged with aggravated driving while intoxicated, and where defendant's DWI charge was aggravated based on her refusal of a warrantless blood test, defendant's conviction for aggravated DWI was reversed because a driver may be deemed to have consented to a warrantless blood test under a state implied consent statute, but the driver may not be subject to a criminal penalty for refusing to submit to such a test, and therefore where defendant was threatened with an unlawful search, her refusal to submit to the search cannot be the basis for aggravating her DWI sentence. *State v. Vargas*, 2017-NMCA-023, cert. granted.

**Single breath sample may constitute refusal.** — Driver who provides only one breath sample may be convicted of refusing to comply with the Implied Consent Act and the implementing regulations, which provide for two tests. *State v. Vaughn*, 2005-NMCA-076, 137 N.M. 674, 114 P.3d 354, cert. denied, 2005-NMCERT-006, 137 N.M. 766, 115 P.3d 229.

**Testing of unconscious person.** — The Implied Consent Act does not require a formal arrest of an unconscious person before the administration of a blood-alcohol test. *State v. Wyrostek*, 1988-NMCA-107, 108 N.M. 140, 767 P.2d 379, cert. denied, 108 N.M. 115, 767 P.2d 354.

**Foundation for admitting test results.** — Rule 7-607 A(2) of the Rules of Criminal Procedure for the Metropolitan Courts provides for the proper foundation to establish proper calibration of blood alcohol testing devices; its requirements may be met through live testimony, affidavit or certification, or calibration testing records. *Bransford v. State Taxation & Revenue Dep't*, 1998-NMCA-077, 125 N.M. 285, 960 P.2d 827.

**Admission of breath test results was proper based on certification of breath machine.** — Where, during defendant's trial for driving while under the influence of intoxicating liquor, defendant claimed that evidence of his blood alcohol content (BAC) was inadmissible because plaintiff, the town of Taos, failed to run radio frequency interference (RFI) tests for the location of the breath test machine and because the solution used to calibrate the breath test machine was used at an incorrect temperature, the district court did not abuse its discretion in admitting defendant's BAC readings, because the town of Taos proffered testimony that the breath machine had a certification sticker issued by the scientific laboratory division of the department of health on it when the test was run, that RFI tests were conducted on the breath machine one year and five months before defendant's breath test, and, based on the evidence that the wet bath simulator used to calibrate the breath machine showed the target temperature, the district court could properly conclude that the simulator solution used to calibrate the breath test machine was used at the proper temperature. *Town of Taos v. Wisdom*, 2017-NMCA-066, cert. denied.

**Proof of test.** — The requirement of this section that the breathalyzer test be "approved by the scientific laboratory division of the department of health pursuant to the

provisions of Section 24-1-22 NMSA 1978" may be satisfied through the arresting officer's testimony regarding his training, the calibration of the machine, and the administration of the test: the state need not independently prove the scientific reliability of the test as part of its prima facie case. *State v. Onsurez*, 2002-NMCA-082, 132 N.M. 485, 51 P.3d 528, cert. denied, 132 N.M. 551, 52 P.3d 411.

**Proof of certification of machine.** — In cases where defendant properly preserves the objection, the state must show that the machine used for administering a breath test has been certified by the state laboratories division. *State v. Onsurez*, 2002-NMCA-082, 132 N.M. 485, 51 P.3d 528, cert. denied, 132 N.M. 551, 52 P.3d 411.

**Challenge to chemical test.** — A motorist wishing to challenge the reliability of a breath or blood test or the accuracy of the results of such tests must do so at the license revocation hearing within the statutory time period. *Fugere v. State Taxation & Revenue Dep't*, 1995-NMCA-040, 120 N.M. 29, 897 P.2d 216, cert. denied, 119 N.M. 771, 895 P.2d 671.

**Failure to observe defendant for twenty minutes.** — A breath alcohol test taken after the defendant was continuously observed for only fifteen minutes was not admissible in her criminal case for driving while intoxicated, because it did not comply with a department of health regulation requiring breath samples to be collected only after the subject has been under continuous observation for at least 20 minutes prior to collection of the first breath sample. *State v. Gardner*, 1998-NMCA-160, 126 N.M. 125, 967 P.2d 465, cert. denied, 126 N.M. 107, 967 P.2d 447.

**Blood sample taken in violation of statutory right** must be suppressed. *State v. Wilson*, 1978-NMCA-073, 92 N.M. 54, 582 P.2d 826.

**City ordinance prohibiting driving while intoxicated does not conflict** with the provisions of the Implied Consent Act (Sections 66-8-105 to 66-8-112 NMSA 1978). *City of Hobbs v. Sparks*, 1973-NMCA-082, 85 N.M. 277, 511 P.2d 763, cert. denied, 85 N.M. 265, 511 P.2d 751.

**Multiple testing permitted.** — The Implied Consent Act, Sections 66-8-105 to 66-8-112 NMSA 1978, permits law enforcement officers who have reasonable grounds to believe that an arrested person has been driving a motor vehicle while under the influence of intoxicating liquor or drugs to direct the administration of multiple or different tests. However, officers should not administer more than one test arbitrarily or without reason. 1991 Op. Att'y Gen. No. 91-13.

A law enforcement officer may request a blood test from a person who has already submitted to a breath test. If the person refuses to submit to the additional test, the person’s driver’s license is subject to mandatory revocation. 1991 Op. Att'y Gen. No. 91-13.

**Law reviews.** — For comment, "Implied Consent in New Mexico," see 10 Nat. Resources J. 378 (1970).

For note, "Constitutional Law - Criminal Law - Evidence - Admissibility of a Motorist's Refusal to Take a Breath-Alcohol Test: McKay v. Davis," see 14 N.M.L. Rev. 257 (1984).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Snowmobile operation as DWI or DUI, 56 A.L.R.4th 1092.

Challenges to use of breath tests for drunk drivers based on claim that partition or conversion ratio between measured breath alcohol and actual blood alcohol is inaccurate, 90 A.L.R.4th 155.

Driving while intoxicated: subsequent consent to sobriety test as affecting initial refusal, 28 A.L.R.5th 459.

## 66-8-108. Consent of person incapable of refusal not withdrawn.

Any person who is dead, unconscious or otherwise in a condition rendering him incapable of refusal, shall be deemed not to have withdrawn the consent provided by Section 66-8-107 NMSA 1978, and the test or tests designated by the law enforcement officer may be administered.

**History:** 1953 Comp., § 64-8-108, enacted by Laws 1978, ch. 35, § 516.

**ANNOTATIONS**

**This section does not deny equal protection of the law,** although it classifies certain persons on the basis of their condition, the classification has a rational basis and is not discriminatory. *State v. Trujillo*, 1973-NMCA-076, 85 N.M. 208, 510 P.2d 1079.

**Testing of unconscious person.** — The Implied Consent Act does not require a formal arrest of an unconscious person before the administration of a blood-alcohol test. *State v. Wyrostek*, 1988-NMCA-107, 108 N.M. 140, 767 P.2d 379, cert. denied, 108 N.M. 115, 767 P.2d 354.

## 66-8-109. Administration of chemical test; payment of costs; additional tests.

A. Only the persons authorized by Section 66-8-103 NMSA 1978 shall withdraw blood from any person for the purpose of determining its alcohol or drug content. This limitation does not apply to the taking of samples of breath.

B. The person tested shall be advised by the law enforcement officer of the person's right to be given an opportunity to arrange for a physician, licensed professional or

practical nurse or laboratory technician or technologist who is employed by a hospital or physician of his own choosing to perform a chemical test in addition to any test performed at the direction of a law enforcement officer.

C. Upon the request of the person tested, full information concerning the test performed at the direction of the law enforcement officer shall be made available to him as soon as it is available from the person performing the test.

D. The law enforcement agency represented by the law enforcement officer at whose direction the chemical test is performed shall pay for the chemical test.

E. If a person exercises his right under Subsection B of this section to have a chemical test performed upon him by a person of his own choosing, the cost of that test shall be paid by the law enforcement agency represented by the law enforcement officer at whose direction a chemical test was administered under Section 66-8-107 NMSA 1978.

**History:** 1953 Comp., § 64-8-109, enacted by Laws 1978, ch. 35, § 517; 1993, ch. 66, § 10.

## ANNOTATIONS

**The 1993 amendment,** effective January 1, 1994, substituted "alcohol or drug content" for "alcoholic content" at the end of the first sentence of Subsection A, inserted "be advised by the law enforcement officer of the person's right to" near the beginning of Subsection B, deleted "or tests" following "test" in Subsection C, and made minor stylistic changes in Subsections A and E.

**Reading contents of implied consent card.** — Where officer read to defendant the contents of an implied consent card issued by the New Mexico Scientific Laboratory Division, which contains, among other statements, the statement that a subject has the right to an independent blood alcohol test, the officer informed defendant of his right to an independent test. *State v. Duarte*, 2007-NMCA-012, 140 N.M. 930, 149 P.3d 1027.

**Reasonable opportunity to arrange for an additional chemical test.** — Law enforcement is required to provide a reasonable opportunity for an arrestee to arrange for an additional chemical test by a qualified professional in addition to any test performed at the direction of law enforcement, and to pay for that test if the arrestee chooses to have it. At a minimum, law enforcement must advise an arrestee of the right to an additional test, the arrestee must be provided with the means to contact a person of the arrestee’s choosing in order to arrange for a chemical test, and police may not unnecessarily hinder or interfere with an arrestee’s attempt to exercise the right to an additional test. *State v. Chakerian*, 2018-NMSC-019, *rev'g* 2015-NMCA-052, 348 P.3d 1027.

Where defendant was arrested for DWI, administered two breath tests by the arresting officer, and advised of his right to arrange for an independent test of his blood, and where defendant expressed a desire to exercise his right to an additional test, and where the officer gave defendant approximately fifteen minutes with a phone and a phone book to seek an additional test, during which time defendant wrote down some numbers but chose not to make any phone calls, the officer's actions were sufficient to afford defendant a reasonable opportunity to obtain an independent chemical test and the officer did not in any way obstruct defendant from calling anyone. *State v. Chakerian*, 2018-NMSC-019, *rev'g* 2015-NMCA-052, 348 P.3d 1027.

**Opportunity to arrange for additional chemical test interpreted.** — Subsection B of this section provides that a person accused of DWI who takes the test ordered by the arresting officer then has a right in the form of an opportunity to arrange for an independent blood test to challenge any disparate results; the plain meaning of the statute imposes a duty that requires law enforcement to meaningfully cooperate with an arrestee's express desire to arrange for an independent blood test. *State v. Chakerian*, 2015-NMCA-052, cert. granted, 2015-NMCERT-005.

Where defendant was arrested for DWI, was administered a breath test by the arresting officer, and was advised of his right to arrange for an independent test of his blood, and where defendant requested that he be afforded that right, the arresting officer's actions in merely giving defendant a telephone and a Yellow Pages telephone book, without any further assistance in locating a person who was authorized to draw blood or test blood for alcohol content, were not sufficient to provide an ordinary person with the means to reasonably obtain an independent test of his or her blood to determine its alcohol content as required by 66-8-109(B) NMSA 1978. *State v. Chakerian*, 2015-NMCA-052, cert. granted, 2015-NMCERT-005.

**Remedy for violation of statutory right to independent blood test.** — The remedy for a violation of a driver's right under 66-8-109(B) NMSA 1978 lies in the discretion of the trial court, subject to review on appeal for an abuse of discretion; a trial court may consider all the facts of the case, including whether trial is before a jury or the bench, the materiality of the blood test results, and prejudice to the defendant. *State v. Chakerian*, 2015-NMCA-052, cert. granted, 2015-NMCERT-005.

**Opportunity to arrange for independent chemical test does not require law enforcement to transport person being tested.** — Where defendant was arrested on suspicion of driving under the influence of intoxicating liquor, and at defendant's request for an independent chemical test, the arresting officer provided defendant with a telephone and a telephone directory with which defendant arranged for a blood draw from a local hospital, the officer's refusal to transport defendant to the hospital for the chemical test did not violate defendant's rights under 66-8-109(B) NMSA 1978; the Implied Consent Act does not require a law enforcement officer directing chemical testing of a driver arrested on suspicion of DWI to transport the driver to another location to receive an independent test that the driver has arranged. *State v. Maxwell*, 2016-NMCA-061, cert. granted.

**Accused need not be told of right to additional tests.** — There is no constitutional reason, either state or federal, which confers upon the accused a right to be expressly told that he has an opportunity, under this section, to have additional tests performed by any qualified person of his choosing. *State v. Myers*, 1975-NMCA-055, 88 N.M. 16, 536 P.2d 280.

Neither statutes nor the constitution requires that defendant be told that he has the right to an additional breath test. *City of Farmington v. Joseph*, 1978-NMCA-011, 91 N.M. 414, 575 P.2d 104.

**Officer did not violate the Implied Consent Act by failing to arrange for a chemical test when defendant never asked for an opportunity to arrange for an additional blood test.** — Where arresting officers pulled over defendant's vehicle, administered field sobriety tests, and placed her under arrest for DWI, and where defendant initially declined to take a breath test and requested a blood test instead but ultimately consented to a breath test which measured two samples of defendant's breath alcohol content at 0.19 and 0.18, respectively, the district court did not err in denying defendant's motion to exclude the breath test results on the grounds that the officer failed to give her an opportunity to arrange for a chemical test in addition to the breath test, because defendant did not, after submitting to the breath test, ask for an opportunity to arrange for an additional blood test. *State v. Smith*, 2019-NMCA-027, cert. denied.

**Omission of "of his own choosing".** — Officer's recitation of defendant's rights adequately conveyed to defendant the right to independent testing, notwithstanding the fact that the officer omitted the language "of his own choosing" from his recitation of Subsection B. *State v. Jones*, 1998-NMCA-076, 125 N.M. 556, 964 P.2d 117.

**Miranda-type warnings are necessary only in situations of either testimonial or communicative evidence,** and New Mexico has consistently excluded physical evidence from the scope of the protection; therefore, it follows that an accused has no constitutional right to a warning concerning the consequences of refusing a blood test. *State v. Myers*, 1975-NMCA-055, 88 N.M. 16, 536 P.2d 280.

**Harmless error.** — Although defendant's right to an independent test was infringed upon by officer who denied him the right to call his physician, the error was harmless, in light of the overwhelming evidence establishing defendant's intoxication, including his appearance, odor, speech and failing of three field sobriety tests, in addition to the fact that defendant's blood-alcohol level of .17 was far above the legal limit. *State v. Jones*, 1998-NMCA-076, 125 N.M. 556, 964 P.2d 117.

**State test results admissible despite defendant's inability to test sample.** — Although defendant had no opportunity to test the same sample, the results of the state's tests were admissible regardless of this fact as the record shows neither intent on the part of the state to destroy evidence nor any negligence by the state since all the

blood was used in the tests conducted. *State v. Myers*, 1975-NMCA-055, 88 N.M. 16, 536 P.2d 280.

**No right to counsel when under custodial arrest following testing.** — A person issued a citation and placed under custodial arrest for driving while under the influence of intoxicating liquor does not have a constitutional right to counsel immediately following a breath alcohol test since it did not amount to initiation of judicial criminal proceedings or prosecutorial commitment, nor was the period following administration of the test a critical stage. *State v. Sandoval*, 1984-NMCA-053, 101 N.M. 399, 683 P.2d 516.

**Substantial evidence supported finding that defendant did not request a blood test.** — Where defendant was arrested for driving while intoxicated; the arresting officer administered a breath alcohol test; defendant claimed that the officer refused to allow defendant to obtain an independent blood test; the officer testified that the officer informed defendant of defendant's right to take a breath test by reading the Implied Consent Act to defendant, that defendant consented to a breath test, and that defendant never indicated that defendant wanted a second test, the officer's testimony provided substantial evidence to support the district court's finding that defendant did not request an additional test. *State v. Anaya*, 2012-NMCA-094, 287 P.3d 956, cert. denied, 2012-NMCERT-007.

**Certified phlebotomist was a laboratory technician for purposes of the Implied Consent Act.** — Where defendant was arrested for DWI, agreed to a blood test and was transported to a hospital where a certified phlebotomist drew his blood for testing, and where defendant moved to exclude his blood test results, asserting the evidence was insufficient to demonstrate the testing was conducted in accordance with § 66-8-103 NMSA 1978, the district court did not abuse its discretion in denying defendant's motion and in concluding that the certified phlebotomist was qualified to draw blood as a laboratory technician, because the phlebotomist in this case completed a phlebotomy course from eastern New Mexico university, received a certificate demonstrating that she was a certified phlebotomist, was hired as a clinical lab assistant to perform blood draws, received additional training in blood draw procedures, and performed approximately fifty blood draws during each of her shifts. The phlebotomist in this case had the requisite training and experience to draw defendant's blood in accordance with the Implied Consent Act. *State v. Warford*, 2022-NMCA-034.

**Certified phlebotomist was "employed" by a hospital within the meaning of the Implied Consent Act.** — Where defendant was arrested for DWI, agreed to a blood test and was transported to a hospital where a certified phlebotomist drew his blood for testing, and where defendant moved to exclude his blood test results, asserting that even if the phlebotomist was deemed a technician or technologist, she was not qualified to perform his blood draw because she was not employed by a hospital or physician as specified in § 66-8-103 NMSA 1978, the district court did not abuse its discretion in denying defendant's motion to exclude, because the hospital contracted with the company that employed the phlebotomist, which hired her to perform blood draws,

trained her in blood-draw procedures and determined that she was qualified to perform blood draws, including legal blood-draw tests; the phlebotomist was an employee of the hospital for the purposes of the Implied Consent Act. *State v. Warford*, 2022-NMCA-034.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Necessity and sufficiency of proof that tests of blood alcohol concentration were conducted in conformance with prescribed methods, 96 A.L.R.3d 745.

Request for prior administration of additional test as constituting refusal to submit to chemical sobriety test under implied consent law, 98 A.L.R.3d 572.

Drunk driving: motorist's right to private sobriety test, 45 A.L.R.4th 11.

Authentication of blood sample taken from human body for purposes of determining blood alcohol content, 76 A.L.R.5th 1.

Authentication of blood sample taken from human body for purposes other than determining blood alcohol content, 77 A.L.R.5th 201.

## 66-8-110. Use of tests in criminal actions or civil actions; levels of intoxication; mandatory charging.

A. The results of a test performed pursuant to the Implied Consent Act may be introduced into evidence in any civil action or criminal action arising out of the acts alleged to have been committed by the person tested for driving a motor vehicle while under the influence of intoxicating liquor or drugs.

B. When the blood or breath of the person tested contains:

(1) an alcohol concentration of less than four one hundredths, it shall be presumed that the person was not under the influence of intoxicating liquor;

(2) an alcohol concentration of at least four one hundredths but less than eight one hundredths:

(a) no presumption shall be made that the person either was or was not under the influence of intoxicating liquor, unless the person is driving a commercial motor vehicle; and

(b) the amount of alcohol in the person's blood or breath may be considered with other competent evidence in determining whether the person was under the influence of intoxicating liquor; or

(3) an alcohol concentration of four one hundredths or more and the person is driving a commercial vehicle, it shall be presumed that the person is under the influence of intoxicating liquor.

C. The arresting officer shall charge the person tested with a violation of Section 66-8-102 NMSA 1978 when the blood or breath of the person contains an alcohol concentration of:

(1) eight one hundredths or more; or

(2) four one hundredths or more if the person is driving a commercial motor vehicle.

D. When a person is less than twenty-one years of age and the blood or breath of the person contains an alcohol concentration of two one hundredths or more, the person's driving privileges shall be revoked pursuant to the provisions of the Implied Consent Act.

E. If the test performed pursuant to the Implied Consent Act is administered more than three hours after the person was driving a vehicle, the test result may be introduced as evidence of the alcohol concentration in the person's blood or breath at the time of the test and the trier of fact shall determine what weight to give the test result for the purpose of determining a violation of Section 66-8-102 NMSA 1978.

F. The determination of alcohol concentration shall be based on the grams of alcohol in one hundred milliliters of blood or the grams of alcohol in two hundred ten liters of breath.

G. The presumptions in Subsection B of this section do not limit the introduction of other competent evidence concerning whether the person was under the influence of intoxicating liquor.

H. If a person is convicted of driving a motor vehicle while under the influence of intoxicating liquor, the trial judge shall inquire into the past driving record of the person before sentence is entered in the matter.

**History:** 1953 Comp., § 64-8-110, enacted by Laws 1978, ch. 35, § 518; 1979, ch. 71, § 9; 1982, ch. 102, § 3; 1983, ch. 76, § 3; 1984, ch. 72, § 5; 1993, ch. 66, § 11; 2003, ch. 51, § 12; 2003, ch. 90, § 5; 2007, ch. 322, § 2.

## ANNOTATIONS

**The 2007 amendment,** effective April 2, 2007, amended Paragraph (2) of Subsection B to add "or breath" and added Subsection E providing for tests performed pursuant to the Implied Consent Act.

**The 2003 amendment,** effective March 28, 2003, substituted "less than four one hundredths" for "five one-hundredths or less" in Paragraph B(1); substituted "at least four one hundredths" for "more than five one-hundredths" in Paragraph B(2); added designations to Subparagraphs B(2)(a) and (b); substituted "unless the person is driving a commercial motor vehicle; and" for "However" at the end of Subparagraph B(2)(a); added Paragraph B(3); and rewrote Subsection C.

Laws 2003, ch. 51, § 12 and Laws 2003, ch. 90, § 5 enacted identical amendments to this section. The section is set out as amended by Laws 2003, ch. 90, § 5. *See* 12-1-8 NMSA 1978.

**The 1993 amendment,** effective January 1, 1994, substituted "When the blood or breath" for "If the blood" at the beginning of Subsections B and C; substituted "an alcohol concentration of five one-hundredths or less" for "five one-hundredths of one percent or less by weight of alcohol" in Subsection B(1); substituted "an alcohol concentration of more than five one-hundredths but less than eight one-hundredths" for "more than five one-hundredths of one percent but less than one tenth of one percent by weight of alcohol" in the first sentence of Subsection B(2); substituted "an alcohol concentration of eight one-hundredths or more" for "one tenth of one percent or more by weight of alcohol" in Subsection C; deleted former Subsection D, which read "The percent by weight of alcohol shall be based on the grams of alcohol in one hundred cubic centimeters of blood"; inserted present Subsections D and E; redesignated former Subsections E and F as present Subsections F and G; and made a minor stylistic change in Subsection B.

**Blood samples taken more than two hours after arrest are admissible.** — Subsection E of Section 66-8-110 NMSA 1978, which provides that the results of blood tests administered under the Implied Consent Act more than three hours after a person was driving a vehicle may be received in evidence, supercedes Scientific Laboratory Division Regulation 7.33.2.12(A)(2) NMAC, which requires blood samples to be collected within two hours of arrest. *State v. Bowden*, 2010-NMCA-070, 148 N.M. 850, 242 P.3d 417, cert. denied, 2010-NMCERT-006, 148 N.M. 582, 241 P.3d 180.

Where a blood sample was drawn more than two hours after defendant was arrested, the results of the blood test were admissible as evidence under Subsection E of Section 66-8-110 NMSA 1978. *State v. Bowden*, 2010-NMCA-070, 148 N.M. 850, 242 P.3d 417, cert. denied, 2010-NMCERT-006, 148 N.M. 582, 241 P.3d 180.

**Blood test taken more than three hours after the collision did not lack a foundation.** — Where defendant was charged with homicide by vehicle (driving while under the influence of drugs), causing great bodily injury (driving while under the influence of drugs), possession of drug paraphernalia, and possession of marijuana following a car collision in which defendant was the driver and where defendant's passenger was killed, and where a test of defendant's blood revealed the presence of THC, the principle psychoactive constituent of marijuana, and where defendant argued that his blood test results were improperly admitted at his trial because SLD regulations

provide that the initial blood samples should be collected within three hours of arrest, and his blood was collected approximately four hours after the collision, the district court did not err in admitting defendant's blood test results, because SLD's regulation establishes a preference for blood tests to be administered within a time-frame that permits a statutory presumption of impairment while still allowing blood tests for alcohol or drugs to be administered outside of this time-frame and to be given appropriate weight under the factual circumstances of each case. *State v. Martinez*, 2020-NMCA-043, cert. denied.

**State need only show compliance with regulations that are accuracy-ensuring.** — Where defendant was charged with homicide by vehicle (driving while under the influence of drugs), causing great bodily injury (driving while under the influence of drugs), possession of drug paraphernalia, and possession of marijuana following a car collision in which defendant was the driver and where defendant's passenger was killed, and where a test of defendant's blood revealed the presence of THC, the principle psychoactive constituent of marijuana, and where defendant argued that his blood test results were improperly admitted at his trial, claiming that the blood test kit that was used to test his blood was not a scientific laboratory division (SLD) approved blood collection kit because the nurse that drew defendant's blood did not use the needle provided in the test kit, the district court did not err in finding that the use of the substitute needle was not a basis upon which to exclude defendant's blood test results, because there was no evidence that the needle included in the SLD-approved blood draw kit was accuracy-ensuring. *State v. Martinez*, 2020-NMCA-043, cert. denied.

**State must make provisions for preservation of blood sample.** — If the state is going to use as evidence the results of a blood alcohol test, it must make provisions for preservation of the blood sample so that if a timely request is made for retesting by the defendant, the sample taken is available. *State v. Lovato*, 1980-NMCA-126, 94 N.M. 780, 617 P.2d 169.

**Blood alcohol percentage material to state's conviction for vehicular homicide.** — Where the state's conviction for vehicular homicide is based primarily upon defendant's driving under the influence of intoxicating liquor, his blood alcohol percentage is clearly material to his guilt or innocence. *State v. Lovato*, 1980-NMCA-126, 94 N.M. 780, 617 P.2d 169.

**Coroners' reports not released on demand.** — This section does not require the state highway department to release copies of coroners' reports on blood-alcohol tests upon demand notwithstanding the provisions of Section 24-11-6 NMSA 1978. 1971 Op. Att'y Gen. No. 71-42.

**Law reviews.** — For comment, "Implied Consent in New Mexico," see 10 Nat. Resources J. 378 (1970).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Construction and application of statutes creating presumption or other inference of intoxication from specific percentages of alcohol present in system, 16 A.L.R.3d 748.

Necessity and sufficiency of proof that tests of blood alcohol concentration were conducted in conformance with prescribed methods, 96 A.L.R.3d 745.

Evidence of automobile passenger's blood-alcohol level as admissible in support of defense that passenger was contributorily negligent or assumed risk of automobile accident, 5 A.L.R.4th 1194.

Destruction of ampoule used in alcohol breath test as warranting suppression of result of test, 19 A.L.R.4th 509.

Validity, construction, and application of statutes directly proscribing driving with blood-alcohol level in excess of established percentage, 59 A.L.R.4th 149.

Challenges to use of breath tests for drunk drivers based on claim that partition or conversion ratio between measured breath alcohol and actual blood alcohol is inaccurate, 90 A.L.R.4th 155.

Authentication of blood sample taken from human body for purposes of determining blood alcohol content, 76 A.L.R.5th 1.

## 66-8-111. Refusal to submit to chemical tests; testing; grounds for revocation of license or privilege to drive.

A. If a person under arrest for violation of an offense enumerated in the Motor Vehicle Code [66-1-1 NMSA 1978] refuses upon request of a law enforcement officer to submit to chemical tests designated by the law enforcement agency as provided in Section 66-8-107 NMSA 1978, none shall be administered except when a municipal judge, magistrate or district judge issues a search warrant authorizing chemical tests as provided in Section 66-8-107 NMSA 1978 upon finding in a law enforcement officer's written affidavit that there is probable cause to believe that the person has driven a motor vehicle while under the influence of alcohol or a controlled substance, thereby causing the death or great bodily injury of another person, or there is probable cause to believe that the person has committed a felony while under the influence of alcohol or a controlled substance and that chemical tests as provided in Section 66-8-107 NMSA 1978 will produce material evidence in a felony prosecution.

B. The department, upon receipt of a statement signed under penalty of perjury from a law enforcement officer stating the officer's reasonable grounds to believe the arrested person had been driving a motor vehicle within this state while under the influence of intoxicating liquor or drugs and that, upon request, the person refused to submit to a chemical test after being advised that failure to submit could result in revocation of the person's privilege to drive, shall revoke the person's New Mexico

driver's license or any nonresident operating privilege for a period of one year or until all conditions for license reinstatement are met, whichever is later.

C. The department, upon receipt of a statement signed under penalty of perjury from a law enforcement officer stating the officer's reasonable grounds to believe the arrested person had been driving a motor vehicle within this state while under the influence of intoxicating liquor and that the person submitted to chemical testing pursuant to Section 66-8-107 NMSA 1978 and the test results indicated an alcohol concentration in the person's blood or breath of eight one hundredths or more if the person is twenty-one years of age or older, four one hundredths or more if the person is driving a commercial motor vehicle or two one hundredths or more if the person is less than twenty-one years of age, shall revoke the person's license or permit to drive or his nonresident operating privilege for a period of:

(1) six months or until all conditions for license reinstatement are met, whichever is later, if the person is twenty-one years of age or older;

(2) one year or until all conditions for license reinstatement are met, whichever is later, if the person was less than twenty-one years of age at the time of the arrest, notwithstanding any provision of the Children's Code [Chapter 32A NMSA 1978]; or

(3) one year or until all conditions for license reinstatement are met, whichever is later, if the person has previously had his license revoked pursuant to the provisions of this section, notwithstanding the provisions of Paragraph (1) of this subsection.

D. The determination of alcohol concentration shall be based on the grams of alcohol in one hundred milliliters of blood or the grams of alcohol in two hundred ten liters of breath.

E. If the person subject to the revocation provisions of this section is a resident or will become a resident within one year and is without a license to operate a motor vehicle in this state, the department shall deny the issuance of a license to him for the appropriate period of time as provided in Subsections B and C of this section.

F. A statement signed by a law enforcement officer, pursuant to the provisions of Subsection B or C of this section, shall be sworn to by the officer or shall contain a declaration substantially to the effect: "I hereby declare under penalty of perjury that the information given in this statement is true and correct to the best of my knowledge." The statement may be signed and submitted electronically in a manner and form approved by the department. A law enforcement officer who signs a statement, knowing that the statement is untrue in any material issue or matter, is guilty of perjury as provided in Section 66-5-38 NMSA 1978.

**History:** 1953 Comp., § 64-8-111, enacted by Laws 1978, ch. 35, § 519; 1979, ch. 71, § 10; 1979, ch. 73, § 1; 1984, ch. 72, § 6; 1985, ch. 178, § 4; 1985, ch. 187, § 2; 1991, ch. 245, § 3; 1993, ch. 66, § 12; 2003, ch. 51, § 13; 2003, ch. 90, § 6; 2005, ch. 269, § 7.

## ANNOTATIONS

**Cross references.** — For mandatory revocation of driver's license, *see* 66-5-29 NMSA 1978.

**The 2005 amendment,** effective June 17, 2005, changed the period of revocation in Subsection C(1) from ninety days to six months; changed the period of revocation in Subsection C(2) from six months to one year if the person was twenty-one years of age at the time of the arrest; deleted in Subsection C(2), the former provision that the person had not previously has his license revoked pursuant to the provisions of this section; deleted the former reference to the Children’s Code in Subsection C(3); and, provided in Subsection F that the statement may be signed and submitted electronically in a manner and form approved by the department.

**The 2003 amendment,** effective March 28, 2003, in Subsection C, substituted "in the person's blood or breath of eight one hundredths or more" for "of eight one hundredths or more in the person's blood or breath" following "an alcohol concentration"; inserted "four one hundredths or more if the person is driving a commercial motor vehicle or" for "or an alcohol concentration of" following "age or older", and deleted "in the person's blood or breath" preceding "if the person".

**Duplicate amendments.** — Laws 2003, ch. 51, § 13 and Laws 2003, ch. 90, § 6 enacted identical amendments to this section. The section was set out as amended by Laws 2003, ch. 90, § 6. *See* 12-1-8 NMSA 1978.

**The 1993 amendment,** effective January 1, 1994, substituted "tests" for "test" in the section heading; substituted "twenty-one years" for "eighteen years" in four places in Subsection C; inserted "or until all conditions for license reinstatement are met, whichever is later" in Paragraphs (1), (2) and (3) of Subsection C; substituted "an alcohol concentration of eight one-hundredths or more" for "one-tenth of one percent or more by weight of alcohol" and "an alcohol concentration of two one-hundredths or more" for "five one-hundredths of one percent or more by weight of alcohol", and inserted "or breath" in the introductory paragraph of Subsection C; inserted "the provisions of Paragraph (1) or (2) of this subsection or" in Subsection C(3); inserted present Subsection D; redesignated former Subsection D as present Subsection E; and added Subsection F.

**The 1991 amendment,** effective October 1, 1991, substituted "department" for "director" in Subsections B, C and D; deleted "is less than eighteen years of age and" following "person" in Paragraph (3) in Subsection C; and made minor stylistic changes in Subsections B and C.

**Constitutionality of Implied Consent Act.** — The Implied Consent Act is not rendered unconstitutional in the civil context just because a refusal to take a breath test under the Act may be used as an element of the criminal offense of aggravated driving while intoxicated (DWI). *Marez v. State Taxation & Revenue Dep't*, 1995-NMCA-030, 119 N.M. 598, 893 P.2d 494.

**Constitutionality of punishment for refusing to submit to a warrantless blood draw under the Implied Consent Act.** — The fourth amendment to the United States constitution does not support an enhanced criminal penalty based upon a defendant's refusal to consent to a blood test for the presence of drugs, and therefore 66-8-102(D)(3) NMSA 1978 is unconstitutional to the extent violation of it is predicated on refusal to consent to a blood draw to test for the presence of any drug in the defendant's blood. *State v. Storey*, 2018-NMCA-009, cert. denied.

Where defendant was charged with aggravated driving while under the influence of intoxicating drugs, and where defendant's DUI charge was aggravated based on his refusal to consent to a warrantless blood test, defendant's conviction for aggravated DUI was reversed because the fourth amendment does not support an enhanced criminal penalty based upon a defendant's refusal to consent to a blood test for the presence of drugs, and therefore a driver cannot be criminally punished for his refusal to submit to a blood test after being arrested on suspicion of driving under the influence of intoxicating liquor or drugs. *State v. Storey*, 2018-NMCA-009, cert. denied.

**Retroactive application of decision in Birchfield v. North Dakota relating to sanctions for refusing to submit to warrantless blood tests.** — The rule announced in *Birchfield v. North Dakota*, 136 S.Ct. 2160 (2016), which held that a person who is arrested for DWI may not be punished for refusing to consent to or submit to a blood test under an implied consent law unless the officer either obtains a warrant or proves probable cause to require the blood test in addition to exigent circumstances, may be applied retroactively, because a new rule may be applied retroactively when it is a substantive rule that alters the range of conduct or the class of persons that the law punishes, and *Birchfield* bars criminal sanctions previously imposed upon a subject for refusing to submit to warrantless blood tests. *State v. Vargas*, 2017-NMSC-029, *aff'g* 2017-NMCA-023, 389 P.3d 1080.

**Implied consent laws can no longer provide that a driver impliedly consents to a blood draw.** — The fourth amendment permits warrantless breath tests incident to legal arrests because noninvasive breath tests only slightly impact a subject's privacy and because the state has an interest in testing breath alcohol content to maintain highway safety and deter drunk driving, but blood tests bear too heavily on a subject's privacy interests to permit the state to seize warrantless samples at all DWI stops. Therefore, when a subject does not consent to a blood draw, officers must obtain a warrant or establish probable cause and exigent circumstances to justify a warrantless search. *State v. Vargas*, 2017-NMSC-029, *aff'g* 2017-NMCA-023, 389 P.3d 1080.

**A driver cannot be subjected to criminal penalties for refusing to submit to a warrantless blood draw.** — Where defendant consented to provide two breath test samples at a DWI checkpoint, but refused to submit to a blood test, her conviction for aggravated DWI was improper, because blood tests bear too heavily on a subject's privacy interests to permit the state to seize warrantless samples at all DWI stops, and when a subject does not consent to such a search, officers must obtain a warrant or establish probable cause and exigent circumstances to justify a warrantless search. *State v. Vargas*, 2017-NMSC-029, *aff'g* 2017-NMCA-023, 389 P.3d 1080.

**No constitutional right to refuse test.** — Because there is no constitutional right to refuse to take a chemical test, the introduction of and comment on a refusal to take such a test does not violate the United States constitution. *McKay v. Davis*, 1982-NMSC-122, 99 N.M. 29, 653 P.2d 860.

**Right is merely not to be forcibly tested.** — The right granted by the legislature in Subsection A is merely the right not to be forcibly tested after manifesting refusal. *McKay v. Davis*, 1982-NMSC-122, 99 N.M. 29, 653 P.2d 860.

**Implied Consent Act does not limit the number of permissible tests** to one, or any other number. *State v. Copeland*, 1986-NMCA-083, 105 N.M. 27, 727 P.2d 1342, cert. denied, 104 N.M. 702, 726 P.2d 856.

**Sworn statement required.** — The statutory requirement of a sworn statement is mandatory and jurisdictional. *Stephens v. State Transp. Dep't*, 1987-NMCA-095, 106 N.M. 198, 740 P.2d 1182.

**Grounds for revocation.** — The Implied Consent Act requires that a driver's license shall be revoked when a driver is arrested in this state for an offense enumerated in the Motor Vehicle Code, NMSA 1978, Sections 66-1-1 to 66-8-137.1, the arresting officer has reasonable grounds to believe the driver was driving under the influence, and the driver refuses to take a breath or blood test after the driver has been advised of the consequences of refusal.. This language includes arrests for driving under the influence contrary to Section 66-8-102, as well as other violations of the Motor Vehicle Code. *Cordova v. Mulholland*, 1988-NMCA-070, 107 N.M. 659, 763 P.2d 368, cert. denied, 107 N.M. 546, 761 P.2d 424.

**Execution of the statement.** — An officer's failure to properly execute the statement, that is, having the statement either notarized or signed under the penalty of perjury, divested the division of jurisdiction to revoke the defendant's driver's license. The requirement that the officer's statement be under penalty of perjury is mandatory rather than directory. *State Transp. Dep't v. Herman*, 1987-NMCA-086, 106 N.M. 138, 740 P.2d 132.

**Blood sample taken in violation of statutory right must be suppressed.** *State v. Wilson*, 1978-NMCA-073, 92 N.M. 54, 582 P.2d 826.

**Officer need only have reasonable grounds to believe driver intoxicated.** — Section requires only that an officer have reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle within the state while under the influence of intoxicating liquor and arresting officer had reasonable grounds to believe that defendant was driving while under the influence of intoxicating liquor where he smelled liquor on her person, she was not walking correctly, and she drove her car into a pump on an open driveway of a service station. *In re McCain*, 1973-NMSC-023, 84 N.M. 657, 506 P.2d 1204.

**Affidavit for search warrant.** — An officer's affidavit, stating that the defendant's driving history showed there was sufficient evidence to charge him for a "fourth offense or subsequent DWI", established probable cause that the defendant had committed a felony while under the influence of alcohol. *State v. Duquette*, 2000-NMCA-006, 128 N.M. 530, 994 P.2d 776, *overruled by State v. Williamson*, 2009-NMSC-039, 146 N.M. 488, 212 P.3d 376.

DWI can be the underlying felony offense for which there must be probable cause to justify a search warrant under Subsection A. *State v. Duquette*, 2000-NMCA-006, 128 N.M. 530, 994 P.2d 776, *overruled by State v. Williamson*, 2009-NMSC-039, 146 N.M. 488, 212 P.3d 376.

Defendant's refusal to take a chemical test is not required in order to obtain a search warrant under Subsection A. *State v. Duquette*, 2000-NMCA-006, 128 N.M. 530, 994 P.2d 776, *overruled by State v. Williamson*, 2009-NMSC-039, 146 N.M. 488, 212 P.3d 376.

**Requirements for search warrant not met.** — Where evidence demonstrated that an arrested motorist had not caused death or great bodily injury, or even an accident, and was guilty of, at most, a first offense of driving under the influence of a controlled substance and possession of less than eight ounces of marijuana, both misdemeanors, no search warrant could lawfully have been obtained to compel a test of the motorist's blood. *Marshall v. Columbia Lea Reg'l Hosp.*, 345 F.3d 1157 (10th Cir. 2003) appeal after remand 474 F. 3d 733 (10th Cir. 2007).

**Exigent circumstances where warrant not obtainable.** — Under circumstances where a search warrant could not lawfully be obtained to compel a test of a motorist's blood, a warrantless search could not be justified on the basis of exigent circumstances. *Marshall v. Columbia Lea Reg'l Hosp.*, 345 F.3d 1157 (10th Cir. 2003) appeal after remand 474 F. 3d 733 (10th Cir. 2007).

**State's interest limited.** — New Mexico statutes clearly signal the state's limited interest in coerced testing of the blood of a motorist charged with a petty misdemeanor. *Marshall v. Columbia Lea Reg'l Hosp.*, 345 F.3d 1157 (10th Cir. 2003) appeal after remand 474 F. 3d 733 (10th Cir. 2007).

**Statement signed under penalty of perjury.** — An officer was subject to the penalties under 66-5-38 NMSA 1978 when he signed a statement seeking to revoke driving privileges. Consequently, the statement was signed under the penalty of perjury and thus met the requirement of this section. *State Transp. Dep't v. Yazzie*, 1991-NMCA-098, 112 N.M. 615, 817 P.2d 1257, cert. denied, 112 N.M. 499, 816 P.2d 1121.

**Acquittal of criminal charge does not affect provision's operation.** — Defendant's acquittal of the crime of driving while intoxicated in no way affected the proceeding to revoke her driver's license for refusing to submit to a test for determining alcohol content of her blood as such proceeding was entirely separate and distinct from the proceeding to determine her guilt or innocence as to the crime for which she was arrested. *In re McCain*, 1973-NMSC-023, 84 N.M. 657, 506 P.2d 1204.

**Instruction of right of refusal not required.** — There is nothing in N.M. Const., art. II, §§ 14 and 15, or in the law or decisions which gives an accused the legal right to an instruction that he has a right to refuse to take a blood alcohol test administered by private individuals prior to arrest. *State v. Fields*, 1964-NMSC-230, 74 N.M. 559, 395 P.2d 908.

**Subsequent consent rule adopted.** — A subsequent change of mind can nullify a driver's initial refusal to take a blood-alcohol test and thus can cure an initial refusal. A driver will be permitted to rescind this initial refusal if the driver can prove the five elements of the test. The test standard is measured by the driver's reasonable ability to comprehend the situation and encourages the driver to recant almost immediately, but never after more than a matter of minutes. *In re Suazo*, 1994-NMSC-070, 117 N.M. 785, 877 P.2d 1088.

**Subsequent consent may cure a prior refusal** to be tested, unless the delay would materially affect the test results or prove substantially inconvenient for law enforcement officers to administer. *State v. Suazo*, 1993-NMCA-039, 117 N.M. 794, 877 P.2d 1097, *aff'd in part*, 1994-NMSC-070, 117 N.M. 785, 877 P.2d 1088.

**Evidence of refusal may be excluded in prosecution for driving while intoxicated.** — In a prosecution for driving while intoxicated contrary to Section 66-8-102 NMSA 1978, a driver's refusal to take a blood alcohol test is not a relevant circumstance to establish consciousness of guilt. Thus a trial court may exclude evidence of the refusal as irrelevant. *State v. Chavez*, 1981-NMCA-060, 96 N.M. 313, 629 P.2d 1242, cert. denied, 96 N.M. 543, 632 P.2d 1181.

**Record supported hearing officer's conclusion** that a driver refused to submit to a breath test, despite his claim of being unable, because of a painful injury to his foot, to blow up the balloon sufficiently to enable the arresting officer to complete the test. *State Dep't of Transp. v. Romero*, 1987-NMCA-151, 106 N.M. 657, 748 P.2d 30.

**DMV not bound by "first offense" adjudication in district court.** — District court judgment treating defendant's DWI conviction as a first offense "for all lawful purposes"

is not binding on the division of motor vehicles in a license revocation proceeding under Subsection C(3) of this section. *Medrow v. State Taxation & Revenue Dep't*, 1998-NMCA-173, 126 N.M. 332, 968 P.2d 1195.

**Revocation periods overlap and are not truly consecutive or concurrent.** — In most cases suspension or revocation periods for conviction of driving while under influence and for refusing to submit to a chemical test will at least partially overlap. But the one-year period of revocation in each instance begins to run from the date of a certain event. Thus, the suspension periods are not consecutive in the usual sense; they are not to be added together to make a total of two years. 1972 Op. Att'y Gen. No. 72-01.

**If driver refuses blood test after submitting to breath test,** the driver's license of the person who refuses a blood test after submitting to a breath test is subject to mandatory revocation. 1991 Op. Att'y Gen. No. 91-13.

**Law reviews.** — For comment, "Implied Consent in New Mexico," see 10 Nat. Resources J. 378 (1970).

For article, "Survey of New Mexico Law, 1979-80: Criminal Law and Procedure," see 11 N.M.L. Rev. 85 (1981).

For article, "Survey of New Mexico Law, 1982-83: Evidence," see 14 N.M.L. Rev. 161 (1984).

For note, "Constitutional Law - Criminal Law - Evidence - Admissibility of a Motorist's Refusal to Take a Breath-Alcohol Test: McKay v. Davis," see 14 N.M.L. Rev. 257 (1984).

For 1984-88 survey of New Mexico administrative law, 19 N.M.L. Rev. 575 (1990).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 122 to 124, 131.

Request before submitting to chemical sobriety test to communicate with counsel as refusal to take test, 97 A.L.R.3d 852.

Request for prior administration of additional test as constituting refusal to submit to chemical sobriety test under implied consent law, 98 A.L.R.3d 572.

Admissibility in criminal case of blood alcohol test where blood was taken despite defendant's objection or refusal to submit to test, 14 A.L.R.4th 690.

Sufficiency of showing of physical inability to take tests for driving while intoxicated to justify refusal, 68 A.L.R.4th 776.

Driving while intoxicated: subsequent consent to sobriety test as affecting initial refusal, 28 A.L.R.5th 459.

Mental incapacity as justifying refusal to submit to tests for driving while intoxicated, 76 A.L.R.5th 597.

60 C.J.S. Motor Vehicles § 164.16.

## 66-8-111.1. Law enforcement officer agent for department; written notice of revocation and right to hearing.

A. On behalf of the department, a law enforcement officer requesting a chemical test or directing the administration of a chemical test pursuant to Section 66-8-107 NMSA 1978 shall serve immediate written notice of revocation and of right to a hearing before the administrative hearings office pursuant to the Implied Consent Act on a person who:

(1) refuses to permit chemical testing; or

(2) submits to a chemical test the results of which indicate an alcohol concentration in the person's blood or breath of:

(a) eight one hundredths or more if the person is twenty-one years of age or older;

(b) four one hundredths or more if the person is driving a commercial motor vehicle; or

(c) two one hundredths or more if the person is less than twenty-one years of age.

B. The written notice of revocation and of a right to a hearing served on the driver shall be a temporary license valid for twenty days or, if the driver requests a hearing pursuant to Section 66-8-112 NMSA 1978, valid until the date the administrative hearings office issues the order following that hearing; provided that a written notice of revocation and right to a hearing shall not be a temporary license for a driver without any otherwise valid driving privileges in this state.

C. The law enforcement officer shall send to the department the signed statement required pursuant to Section 66-8-111 NMSA 1978.

**History:** 1978 Comp., § 66-8-111.1, enacted by Laws 1984, ch. 72, § 7; 1985, ch. 178, § 5; 1985, ch. 187, § 3; 1991, ch. 245, § 4; 1993, ch. 66, § 13; 2003, ch. 51, § 14; 2003, ch. 90, § 7; 2015, ch. 73, § 34; 2019, ch. 167, § 13.

**ANNOTATIONS**

**The 2019 amendment,** effective October 1, 2019, clarified certain language related to written notice of revocation and right to a hearing; added new subsection designations "A." through "C."; in Subsection A, added new paragraph designations "(1)" and "(2)", in Paragraph A(2), added subparagraph designations "(a)" through "(c)"; in Subsection B, added "The written", after "notice of revocation", deleted "the law enforcement officer shall take the license or permit of the driver, if any, and issue a" and added "and of a right to a hearing served on the driver shall be a", after "provided that a", added "written notice of revocation and right to a hearing shall not be a", after "temporary license", deleted "shall not be issued to" and added "for", after "driver without", deleted "a valid license or permit" and added "any otherwise valid driving privileges in this state."; and in Subsection C, after "shall send", deleted "the person's driver's license", and after "department", deleted "along with".

**The 2015 amendment,** effective July 1, 2015, provides for law enforcement officers to serve immediate written notice of revocation and of right to a hearing before the administrative hearings office on a person who refuses to permit chemical testing, pursuant to the Implied Consent Act, or on a person who submits to a chemical test the results of which indicate a certain level of alcohol in the blood or breath; after "notice of revocation and of right to a hearing", added "before the administrative hearings office pursuant to the Implied Consent Act", and after "valid until the date the", deleted "department" and added "administrative hearings office".

**The 2003 amendment,** effective March 28, 2003, in the first sentence, inserted "in the person's blood or breath" following "an alcohol concentration", deleted "in the person's blood or breath" following "one hundredths or more", substituted "four one hundredths or more if the person is driving a commercial motor vehicle or two one hundredths or more" for "or an alcohol concentration of two one hundredths or more in the person's blood or breath" following "age or older", and substituted "a temporary license shall not" for "no temporary license shall" following "hearing; provided that".

**The 1993 amendment,** effective January 1, 1994, substituted the language beginning "an alcohol concentration of ten one-hundredths or more" for "one-tenth of one percent or more by weight of alcohol in the person's blood if the person is eighteen years of age or older or five one-hundredths of one percent or more by weight of alcohol in the person's blood if the person is less than eighteen years of age" at the end of the first sentence.

**The 1991 amendment,** effective October 1, 1991, substituted "department" for "division" in the section heading and for "director" in the first and final sentences and, in the second sentence, substituted "twenty days" for "thirty days" and inserted "or, if the driver request a hearing pursuant to Section 66-8-112 NMSA 1978, valid until the date the department issues the order following that hearing".

**Notice of revocation did not violate due process.** — An English language notice of an administrative license revocation hearing which has been personally served upon a person arrested for driving while intoxicated satisfies federal due process even if the

person does not read English. *Maso v. N.M. Taxation & Revenue Dep't*, 2004-NMSC-028, 136 N.M. 161, 96 P.3d 286.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Sufficiency of notice and hearing before revocation or suspension of motor vehicle driver's license, 60 A.L.R.3d 427.

60 C.J.S. Motor Vehicles § 164.9.

## 66-8-112. Revocation of license or privilege to drive; notice; effective date; hearing; hearing costs; review.

A. The effective date of revocation pursuant to Section 66-8-111 NMSA 1978 is twenty days after notice of revocation or, if the person whose driver's license or privilege to drive is being revoked or denied requests a hearing pursuant to the Administrative Hearings Office Act [Chapter 7, Article 1B NMSA 1978], the date that the administrative hearings office issues the order following that hearing. The date of notice of revocation is:

(1) the date the law enforcement officer serves written notice of revocation and of right to a hearing pursuant to Section 66-8-111.1 NMSA 1978; or

(2) in the event the results of a chemical test cannot be obtained immediately, the date notice of revocation is served by mail by the department. This notice of revocation and of right to a hearing shall be sent by certified mail and shall be deemed to have been served on the date borne by the return receipt showing delivery, refusal of the addressee to accept delivery or attempted delivery of the notice at the address obtained by the arresting law enforcement officer or on file with the department.

B. Within ten days after receipt of notice of revocation pursuant to Subsection A of this section, a person whose license or privilege to drive is revoked or denied or the person's agent may request a hearing. The hearing request shall be made in writing and shall be accompanied by a payment of twenty-five dollars ($25.00) or a sworn statement of indigency on a form provided by the department. A standard for indigency shall be established pursuant to rules adopted by the department. Failure to request a hearing within ten days shall result in forfeiture of the person's right to a hearing. Any person less than eighteen years of age who fails to request a hearing within ten days shall have notice of revocation sent to the person's parent, guardian or custodian by the department. A date for the hearing shall be set by the administrative hearings office, if practical, within thirty days after receipt of notice of revocation. The hearing shall be held in the county in which the offense for which the person was arrested took place.

C. The administrative hearings office may postpone or continue any hearing on its own motion or upon application from the person and for good cause shown for a period not to exceed ninety days from the date of notice of revocation and, provided that, upon a continuance, the department shall extend the validity of the temporary license for the period of the postponement or continuation.

D. At the hearing, the administrative hearings office may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers.

E. The hearing shall be limited to the following issues:

(1) whether the law enforcement officer had reasonable grounds to believe that the person had been driving a motor vehicle within this state while under the influence of intoxicating liquor or drugs;

(2) whether the person was arrested;

(3) whether this hearing is held no later than ninety days after notice of revocation; and either

(4) whether:

(a) the person refused to submit to a test upon request of the law enforcement officer; and

(b) the law enforcement officer advised that the failure to submit to a test could result in revocation of the person's privilege to drive; or

(5) whether:

(a) the chemical test was administered pursuant to the provisions of the Implied Consent Act; and

(b) the test results indicated an alcohol concentration in the person's blood or breath of eight one hundredths or more if the person is twenty-one years of age or older, four one hundredths or more if the person is driving a commercial motor vehicle or two one hundredths or more if the person is less than twenty-one years of age.

F. The administrative hearings office shall enter an order sustaining the revocation or denial of the person's license or privilege to drive if the hearing officer from the administrative hearings office finds that:

(1) the law enforcement officer had reasonable grounds to believe the driver was driving a motor vehicle while under the influence of intoxicating liquor or drugs;

(2) the person was arrested;

(3) this hearing is held no later than ninety days after notice of revocation; and

(4) either:

(a) the person refused to submit to the test upon request of the law enforcement officer after the law enforcement officer advised the person that the person's failure to submit to the test could result in the revocation of the person's privilege to drive; or

(b) that a chemical test was administered pursuant to the provisions of the Implied Consent Act and the test results indicated an alcohol concentration in the person's blood or breath of eight one hundredths or more if the person is twenty-one years of age or older, four one hundredths or more if the person is driving a commercial motor vehicle or two one hundredths or more if the person is less than twenty-one years of age.

G. If one or more of the elements set forth in Paragraphs (1) through (4) of Subsection F of this section are not found by the hearing officer, the person's license shall not be revoked.

H. A person adversely affected by an order of the administrative hearings office may seek review within thirty days in the district court in the county in which the offense for which the person was arrested took place. The district court, upon thirty days' written notice to the department, shall hear the case. On review, it is for the court to determine only whether reasonable grounds exist for revocation or denial of the person's license or privilege to drive based on the record of the administrative proceeding.

I. Any person less than eighteen years of age shall have results of the person's hearing forwarded by the administrative hearings office to the person's parent, guardian or custodian.

**History:** 1953 Comp., § 64-8-112, enacted by Laws 1978, ch. 35, § 520; 1979, ch. 71, § 11; 1984, ch. 72, § 8; 1985, ch. 178, § 6; 1985, ch. 187, § 4; 1991, ch. 245, § 5; 1993, ch. 66, § 14; 2003, ch. 51, § 15; 2003, ch. 90, § 8; 2015, ch. 73, § 35.

## ANNOTATIONS

**Cross references.** — For notice by the division, *see* 66-2-11 NMSA 1978.

For subpoenas, *see* Rule 1-045 NMRA.

**The 2015 amendment,** effective July 1, 2015, provided that the date of license revocation is twenty days after notice of revocation or the date that the administrative hearings office issues an order following a license revocation hearing; in the introductory paragraph of Subsection A, after "hearing pursuant to", deleted "this section" and added "the Administrative Hearings Office Act", and after "the date that the", deleted "department" and added "administrative hearings office"; in Subsection B, after "established pursuant to", deleted "regulations" and added "rules", after "revocation sent to", deleted "his" and added "the person’s", and after "set by the", deleted "department" and added "administrative hearings office"; in Subsection C, after

"The", deleted "department" and added "administrative hearings office", after "provided that", added "upon a continuance", and after "the department", deleted "extends" and added "shall extend"; in Subsection D, after "hearing, the", deleted "department or its agent" and added "administrative hearings office"; in Subsection E, after "limited to the", added "following"; in the introductory paragraph of Subsection F, after "The", deleted "department" and added "administrative hearings office", and after "drive if the", deleted "department" and added "hearing officer from the administrative hearings office"; in Subsection F, Paragraph (4)(a), after "officer advised", deleted "him" and added "the person", after "that", deleted "his" and added "the person's", and after "revocation of", deleted "his" and added "the person's"; in Subsection G, after "not found by the", deleted "department" and added "hearing officer"; in Subsection H, after "order of the", deleted "department" and added "administrative hearings office"; in Subsection I, after "results of", deleted "his" and added "the person's", after "forwarded by the", deleted "department" and added "administrative hearings office", and after "to", deleted "his" and added "the person's".

**The 2003 amendment,** effective March 28, 2003, inserted "driver's" preceding "license or privilege" in Subsection A; added"or drugs" at the end of Paragraph E(1); added "whether:" at the beginning of Paragraphs E(4) and (5); deleted "whether" at the beginning of Subparagraphs E(4)(a), (b), and (5)(a); rewrote Subparagraph E(5)(b); substituted "drugs" for "drug" at the end of Paragraph F(1); added "either:" in Paragraph E(4); added designations Subparagraph E(4)(a) and (b); deleting "either" near the beginning of Subparagraph E(4)(a); in Subparagraph E(5)(b), inserted "in the person's blood or breath" following "an alcohol concentration", substituted "four one hundredths or more if the person is driving a commercial motor vehicle or" for "or an alcohol concentration of" following "age or older"; added the Subsection G designation and redesignated former Subsections G and H as present Subsections H and I; and substituted "Subsection F of this section" for "this Subsection" in present Subsection G.

**Duplicate amendments.** — Laws 2003, ch. 51, § 15 and Laws 2003, ch. 90, § 8 enacted identical amendments to this section. The section was set out as amended by Laws 2003, ch. 90, § 8. *See* 12-1-8 NMSA 1978.

**The 1993 amendment,** effective January 1, 1994, inserted "hearing costs" in the section heading; inserted the second and third sentences of Subsection B; substituted "test was" for "tests were" in Subsection E(5)(a); rewrote Subsection E(5)(b), which read "the test results indicated a blood alcohol content of one-tenth of one percent or more by weight if the person is eighteen years of age or older or a blood alcohol content of five one-hundredths of one percent or more by weight if the person is less than eighteen years of age"; deleted "either rescinding or" following "order" in the introductory paragraph of Subsection F; substituted the language beginning "an alcohol concentration of eight one-hundredths or more" for "a blood alcohol content of one-tenth of one percent or more by weight if the person is eighteen years of age or older or a blood alcohol content of five one-hundredths of one percent or more by weight if the person is less than eighteen years of age" at the end of Subsection F(4); and

substituted "elements set forth in Paragraphs (1) through (4) of this subsection" for "above" in the final sentence of Subsection F.

**The 1991 amendment,** effective October 1, 1991, substituted "department" for "division" and "director" throughout the section; substituted "twenty days" for "thirty days" in the first sentence in Subsection A; and made related changes and minor stylistic changes throughout the section.

**Constitutionality of Implied Consent Act.** — The Implied Consent Act is not rendered unconstitutional in the civil context just because a refusal to take a breath test under the Act may be used as an element of the criminal offense of aggravated driving while intoxicated (DWI). *Marez v. State Taxation & Revenue Dep't*, 1995-NMCA-030, 119 N.M. 598, 893 P.2d 494.

**Double jeopardy does not bar DWI prosecution after license revocation.** — An administrative driver's license revocation under the Implied Consent Act does not constitute "punishment" for purposes of the double jeopardy clause; thus, the state is not barred from prosecuting an individual for driving under the influence (DWI) even though the individual has been subjected to an administrative hearing for driver's license revocation based on the same offense. *State ex rel. Schwartz v. Kennedy*, 1995-NMSC-069, 120 N.M. 619, 904 P.2d 1044.

**Applicability of Miranda requirements.** — A motorist's statements and other evidence obtained by the police following a traffic stop are admissible at an administrative hearing regarding revocation of his driver's license although the motorist was not given Miranda warnings, since on-the-scene questioning does not require advisement of Miranda rights; a field sobriety test, in and of itself, does not violate the privilege against self incrimination; and inculpatory statements made to police during a traffic stop, prior to formal arrest, are not the product of "custodial interrogation." *Armijo v. State ex rel. Transportation Dep't*, 1987-NMCA-052, 105 N.M. 771, 737 P.2d 552.

**This section and Section 66-5-35 NMSA 1978 are not read to preclude application of 39-3-1.1** NMSA 1978; on the contrary, they can be read together harmoniously with 66-5-36 NMSA 1978 to effect the legislature’s intent to standardize the method of obtaining judicial review of final decisions on certain administrative agencies. *Dixon v. State Taxation & Revenue Dep’t*, 2004-NMCA-044, 135 N.M. 431, 89 P.3d 680.

**Party should file petition for certiorari** when that party is seeking review in the Court of Appeals of a district court’s determination on appeal from a motor vehicles division decision revoking a license or denying a limited license. *Dixon v. State Taxation & Revenue Dep’t*, 2004-NMCA-044, 135 N.M. 431, 89 P.3d 680.

**Time for setting hearing.** — The provision in Subsection B that "a date for the hearing shall be set by the department, if practical, within thirty days" is directory, not mandatory. *Rodarte v. State Taxation & Revenue Dep't, Motor Vehicle Div.*, 1995-NMCA-078, 120 N.M. 229, 900 P.2d 978.

A revocation hearing held two and one-half months after the notice of revocation did not violate the petitioner's procedural due process rights. *Rodarte v. State Taxation & Revenue Dep't, Motor Vehicle Div.*, 1995-NMCA-078, 120 N.M. 229, 900 P.2d 978.

**Hearing within ninety days of notice.** — The 90-day time limit for conducting a revocation hearing is mandatory and cannot be waived. *State Taxation & Revenue Dep't v. Bargas*, 2000-NMCA-103, 129 N.M. 800, 14 P.3d 538.

The requirement that the revocation hearing be held within 90 days is mandatory. *In re Weber*, 1991-NMCA-075, 112 N.M. 697, 818 P.2d 1221, *overruled on other grounds by State Taxation & Revenue Dep't v. Bargas*, 2000-NMCA-103, 129 N.M. 800, 14 P.3d 538.

Case was reversed and remanded with instructions to dismiss the revocation proceeding, where there was no substantial evidence in the record as a whole that the DMV held the revocation hearing in 90 days, or that the licensee waived the 90-day limit. *In re Weber*, 1991-NMCA-075, 112 N.M. 697, 818 P.2d 1221, *overruled on other grounds by State Taxation & Revenue Dep't v. Bargas*, 2000-NMCA-103, 129 N.M. 800, 14 P.3d 538.

**Compliance with requirements for hearing request.** — Because defendant did not accompany his hearing request with the $25.00 fee or a sworn statement of indigency, he thereby forfeited his right to a revocation hearing. *Sitzer v. State Taxation & Revenue Dep't*, 2000-NMCA-056, 129 N.M. 274, 5 P.3d 1078.

**Premature notice of license revocation** can trigger the ninety-day time frame. *Dixon v. State Taxation & Revenue Dep't*, 2004-NMCA-044, 135 N.M. 431, 89 P.3d 680.

**Telephonic revocation hearings prohibited.** — This section does not authorize telephonic revocation hearings. Such hearings are required to be held in person. *Evans v. State, Taxation & Revenue Dep't*, 1996-NMCA-080, 122 N.M. 216, 922 P.2d 1212, cert. denied, 122 N.M. 112, 921 P.2d 308.

**Nonessential business closure applied to the administrative hearings office.** — Where defendant was arrested for DWI and was given a notice of license revocation after she refused to submit to a chemical test, and where defendant's revocation hearing was held telephonically because of the public health emergency caused by the COVID-19 pandemic, despite defendant's request for an in-person hearing, and the department of health's public health emergency order requiring all nonessential businesses to reduce their in-person workforce by 100 percent, and where defendant claimed that the administrative hearings office (AHO) does not fall under the definition of "nonessential business" and therefore the office closure requirement in the public health emergency order did not apply to the AHO, defendant's claim was without merit, because the public health emergency order explicitly stated that it applied to "all public and private employers" and "all other state departments and agencies," and categorized as essential businesses only those businesses that provide professional services. The

AHO does not provide professional services, but instead acts as a quasi-judicial body to determine whether a person's license revocation should be upheld. Therefore, the AHO's decision to require a telephonic hearing during the closure was supported and authorized by the department of health's public emergency order. *Martinez v. N.M. Tax'n & Revenue Dep't*, 2023-NMCA-049.

**Administrative hearing officer did not misrepresent or exceed her authority in requiring revocation hearings to be held telephonically.** — Where defendant was arrested for DWI and was given a notice of license revocation after she refused to submit to a chemical test, and where defendant's revocation hearing was held telephonically, despite defendant's request for an in-person hearing, because of an ongoing public health emergency due to the COVID-19 pandemic and the department of health's public health emergency order requiring all nonessential businesses to reduce their in-person workforce by 100 percent, and where defendant claimed that the administrative hearing officer held herself out as a member of the judiciary and exceeded her authority by ordering a telephonic revocation hearing, defendant's claim is without merit, because classifying hearing officers as administrative law judges is authorized by the administrative code, and the administrative hearing officer, in this case, did not exceed her authority in requiring hearings to be scheduled telephonically in compliance with the governor's public health emergency declaration and the department of health's public health emergency order. *Martinez v. N.M. Tax'n & Revenue Dep't*, 2023-NMCA-049.

**Telephonic revocation hearing was not improper.** — Where defendant was arrested for DWI and was given a notice of license revocation after she refused to submit to a chemical test, and where defendant's revocation hearing was held telephonically, despite defendant's request for an in-person hearing, because of an ongoing public health emergency due to the COVID-19 pandemic and the department of health's public health emergency order requiring all nonessential businesses to reduce their in-person workforce by 100 percent, and where defendant claimed that the telephonic hearing was not authorized by Implied Consent Act or any other statute, defendant's claim was without merit, because by passing the Public Health Emergency Response Act, NMSA 1978, §§ 12-10A-1 to 12-10A-19, the legislature authorized the executive branch, including the administrative hearings office, to take whatever steps "reasonable and necessary" to implement public health emergency orders. *Martinez v. N.M. Tax'n & Revenue Dep't*, 2023-NMCA-049.

**Officer's failure to fill in date on notice of revocation** did not deprive the department of jurisdiction. *Sitzer v. State Taxation & Revenue Dep't*, 2000-NMCA-056, 129 N.M. 274, 5 P.3d 1078.

**In license revocation proceedings preponderance of the evidence** is sufficient to prove existence of reasonable grounds. *State Dep't of Motor Vehicles v. Gober*, 1973-NMSC-082, 85 N.M. 457, 513 P.2d 391.

**Requirements of Subsection F.** — In order for the department of motor vehicles (DMV) to revoke a driver's license, a hearing officer must find that the DMV proved by a preponderance of the evidence all of the facts listed in Subsection F. *In re Weber*, 1991-NMCA-075, 112 N.M. 697, 818 P.2d 1221, *overruled on other grounds by State Taxation & Revenue Dep't v. Bargas*, 2000-NMCA-103, 129 N.M. 800, 14 P.3d 538.

**Nature of hearing allowed by Subsection H.** — The district court is not necessarily required to conduct an adjudicatory hearing in order to "hear" a case, although it may if it so desires. *State Transp. Dep't v. Yazzie*, 1991-NMCA-098, 112 N.M. 615, 817 P.2d 1257, cert. denied, 112 N.M. 499, 816 P.2d 1121.

**Challenge to chemical test.** — A motorist wishing to challenge the reliability of a breath or blood test or the accuracy of the results of such tests must do so at the license revocation hearing within the statutory time period. *Fugere v. State Taxation & Revenue Dep't*, 1995-NMCA-040, 120 N.M. 29, 897 P.2d 216, cert. denied, 119 N.M. 771, 895 P.2d 671.

**Breath test refusal question of fact.** — Refusal to submit to a breath test is a question of fact. Where there was conflicting evidence concerning defendant's inability to take the breath test, the courts only need determine if there was substantial evidence to support the hearing officer's determination that defendant refused the breath test. *State v. Suazo*, 1993-NMCA-039, 117 N.M. 794, 877 P.2d 1097, *aff'd in part*, 1994-NMSC-070, 117 N.M. 785, 877 P.2d 1088.

**Notification of blood test results.** — When a blood test is administered at the time of driver’s arrest, motor vehicles division, not the officer, gives notice by mail after the blood test results are available and indicate that the driver’s blood alcohol concentration exceeds permissible limits. *Dixon v. State Taxation & Revenue Dep’t*, 2004-NMCA-044, 135 N.M. 431, 89 P.3d 680.

**No relation-back requirement.** — This section contains no requirement that the blood alcohol test result relate back to the time that the licensee was driving, and there is no need to add such a requirement to rationalize the statute. On the contrary, omission of a relation-back requirement enables the State to provide expedited hearings without causing unfairness to licensees. *Bierner v. State Taxation & Revenue Dep't*, 1992-NMCA-036, 113 N.M. 696, 831 P.2d 995.

**Tape recording is acceptable method** of preserving record of administrative proceedings. *State Dep't of Motor Vehicles v. Gober*, 1973-NMSC-082, 85 N.M. 457, 513 P.2d 391.

**Judicial hearing confined to administrative hearing's record.** — Absent a specific statutory provision, the court is confined to the record of the administrative proceedings. *State, Dep't of Motor Vehicles v. Gober*, 1973-NMSC-082, 85 N.M. 457, 513 P.2d 391.

**English notice of revocation satisfies due process.** — English-language notice regarding administrative revocation of a driver's license is compatible with due process when it is personally delivered to a driver during the course of his arrest for driving under the influence. *Maso v. N.M. Taxation & Revenue Dep't*, 2004-NMSC-028, 136 N.M. 161, 96 P.3d 286.

**Scope of review of constitutionality of arrest.** — The district court exercises its appellate jurisdiction, not its original jurisdiction, when it reviews an appeal regarding the constitutionality of an arrest under the Implied Consent Act. *Schuster v. N.M. Dep't. of Taxation & Revenue*, 2012-NMSC-025, 283 P.3d 288.

**The constitutionality of an arrest should be reviewed under the court's appellate jurisdiction.** — Where petitioner appealed the motor vehicle division's (MVD) revocation of his driver's license for refusing to submit to a requested chemical test after he was advised that he would lose his privilege to drive if he refused the test, claiming that the implied consent advisory should have been given to him in Spanish, petitioner's native language, and that the failure to give the implied consent advisory in Spanish violated petitioner's constitutional right to due process, the district court erred in converting the appeal into a petition for writ of mandamus arising under its original jurisdiction on the grounds that MVD lacked jurisdiction to rule on petitioner's due process argument, because MVD, in determining whether it can answer the questions posed by 66-8-112(E)(4) NMSA in the affirmative, was both authorized and required to answer whether due process requires that a non-English speaking driver fully understand the implications of his or her refusal to submit to a breath or blood alcohol test upon request. *Barraza v. N.M. Taxation & Revenue Dep't*, 2017-NMCA-043.

**The constitutionality of an arrest is a prerequisite to the revocation of a driver's license.** — The arrest required for a license revocation under the Implied Consent Act and the police activity leading up to the arrest must be constitutional. The motor vehicle division must evaluate and find that the arrest and police activity leading up to the arrest of a driver charged with driving while intoxicated are constitutional as a prerequisite to revoking a driver's license. *Schuster v. N.M. Dept. of Taxation & Revenue*, 2012-NMSC-025, 283 P.3d 288, *overruling Glynn v. N.M. Taxation & Revenue Dep't*, 2011-NMCA-031, 149 N.M. 518, 252 P.3d 742.

**Arrest and police activity leading up to arrest was constitutional.** — Where a police officer observed defendant driving a motorcycle in the parking lot of a bar when the motorcycle fell over on its side; the police officer approached defendant to determine whether defendant was injured and to assess damage to the motorcycle for possible insurance claims; the policed officer smelled alcohol on defendant's breath and noticed that defendant's eyes were blood shot and watery; defendant admitted that defendant had consumed two beers; defendant performed field sobriety tests poorly; the police officer then arrested defendant for DWI; defendant consented to two breath tests which registered readings of 0.13 and 0.14; the police officer then issued defendant a notice that defendant's driver's license would be revoked; and the MVD hearing officer found that the police officer initially interacted with defendant in the police officer's role as a

community caretaker; the police officer expanded the caretaker encounter into a DWI investigation based on reasonable suspicion because of defendant's breath smelling of alcohol and watery and blood shot eyes, and the police officer had probable cause to arrest defendant for DWI after defendant failed the field sobriety tests and because defendant had been in physical control of the motorcycle when the officer arrived on the scene, there was sufficient evidence to support the MVD hearing officer's finding that the police officer had probable cause to arrest defendant for DWI and the district court correctly concluded that the revocation of defendant's driver's license was proper. *Schuster v. N.M. Dep't of Taxation & Revenue*, 2012-NMSC-025, 283 P.3d 288, *overruling Glynn v. N.M. Taxation & Revenue Dep't*, 2011-NMCA-031, 149 N.M. 518, 252 P.3d 742.

**The validity of a traffic stop is irrelevant in license revocation hearings.** — The constitutionality of a traffic stop is not a necessary element of a license revocation under the Implied Consent Act and the constitutionality of the stop need not be decided by any tribunal for purposes of license revocation. *Glynn v. N.M. Taxation & Revenue Dep't*, 2011-NMCA-031, 149 N.M. 518, 252 P.3d 742, cert. denied, 2011-NMCERT-003, 150 N.M. 619, 264 P.3d 520.

**The exclusionary rule does not apply in license revocation hearings** under the Implied Consent Act. *Glynn v. N.M. Taxation & Revenue Dep't*, 2011-NMCA-031, 149 N.M. 518, 252 P.3d 742, cert. denied, 2011-NMCERT-003, 150 N.M. 619, 264 P.3d 520.

**License revocation was valid.** — Where a police officer observed driver's vehicle strike a curb and fail to maintain its lane; driver had an odor of alcohol, admitted to drinking, failed field sobriety tests, and had a breath alcohol test reading of .09 and .08; the municipal court granted a motion to suppress evidence because there was insufficient probable cause for the stop and dismissed the DWI charges against driver; and the MVD hearing officer determined that the police officer had reasonable suspicion to stop driver, admitted the evidence obtained after the stop, and revoked driver's license, the validity of the traffic stop was irrelevant to the issues to be decided by the hearing officer, the exclusionary rule did not apply in the proceeding, and the hearing officer did not err in revoking driver's license. *Glynn v. N.M. Taxation & Revenue Dep't*, 2011-NMCA-031, 149 N.M. 518, 252 P.3d 742, cert. denied, 2011-NMCERT-003, 150 N.M. 619, 264 P.3d 520.

**Law reviews.** — For comment, "Implied Consent in New Mexico," see 10 Nat. Resources J. 378 (1970).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 107 to 113, 115, 117 to 120, 122 to 124, 131, 133 to 139, 143 to 145.

Request before submitting to chemical sobriety test to communicate with counsel as refusal to take test, 97 A.L.R.3d 852.

## 66-8-113. Reckless driving.

A. Any person who drives any vehicle carelessly and heedlessly in willful or wanton disregard of the rights or safety of others and without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property is guilty of reckless driving.

B. Every person convicted of reckless driving shall be punished, notwithstanding the provisions of Section 31-18-13 NMSA 1978, upon a first conviction by imprisonment for not less than five days nor more than ninety days, or by a fine of not less than twenty-five dollars ($25.00) nor more than one hundred dollars ($100), or both and on a second or subsequent conviction by imprisonment for not less than ten days nor more than six months, or by a fine of not less than fifty dollars ($50.00) nor more than one thousand dollars ($1,000), or both.

C. Upon conviction of violation of this section, the director may suspend the license or permit to drive and any nonresident operating privilege for not to exceed ninety days.

**History:** 1953 Comp., § 64-8-113, enacted by Laws 1978, ch. 35, § 521; 1987, ch. 97, § 4.

### ANNOTATIONS

**Cross references.** — For homicide by vehicles, *see* 66-8-101 NMSA 1978.

For driving while intoxicated, *see* 66-8-102 NMSA 1978.

For immediate appearance before magistrate for violation, *see* 66-8-122 NMSA 1978.

**The 1987 amendment,** effective April 7, 1987, in Subsection B inserted "notwithstanding the provisions of Section 31-18-13 NMSA 1978" following "shall be punished" near the beginning.

### I. GENERAL CONSIDERATION.

**The offense of reckless driving is a petty misdemeanor** and is subject to a one-year statute of limitations. *State v. Trevizo*, 2011-NMCA-069, 150 N.M. 158, 257 P.3d 978.

**There is no such crime as homicide by vehicle by careless driving.** *State v. Yazzie*, 1993-NMCA-101, 116 N.M. 83, 860 P.2d 213, *overruled on other grounds by State v. Yarborough*, 1996-NMSC-068, 122 N.M. 596, 930 P.2d 131.

**Violation of reckless driving provision is negligence per se.** *Bell v. Carter Tobacco Co.*, 1937-NMSC-053, 41 N.M. 513, 71 P.2d 683.

**Death caused by mere negligence no basis for criminal prosecution.** — A death caused by mere negligence, not amounting to a reckless, willful and wanton disregard of consequences to others, lays no foundation for criminal prosecution. *State v. Myers*, 1975-NMCA-055, 88 N.M. 16, 536 P.2d 280.

**"Operating" vs. "driving" motor vehicle.** – The legislature has made no distinction in this section as to whether "operating a motor vehicle" means to drive or be in actual physical control of the vehicle. *State v. Laney*, 2003-NMCA-144, 134 N.M. 648, 81 P.3d 591, cert. denied, 2003-NMCERT-003, 135 N.M. 51, 84 P.3d 668.

**Reckless driving is distinguished from drunken driving** so that a conviction for one does not preclude prosecution for the other. *Rea v. Motors Ins. Corp.*, 1944-NMSC-002, 48 N.M. 9, 144 P.2d 676; *State v. Sisneros*, 1938-NMSC-049, 42 N.M. 500, 82 P.2d 274.

**Offense not necessarily lesser included offense in vehicular homicide.** — A conviction or acquittal of a lesser offense necessarily included in a greater offense bars a subsequent prosecution for the greater offense. However, where the indictment against defendant was phrased in the alternative charging him with homicide by vehicle while violating either Section 66-8-102 NMSA 1978 or Section 64-22-3, 1953 Comp. (similar to this section), the prosecution was not barred by a conviction in municipal court for driving under the influence since the lesser offense of driving while under the influence of intoxicating liquor is not necessarily included in the greater offense of homicide by vehicle. *State v. Tanton*, 1975-NMSC-057, 88 N.M. 333, 540 P.2d 813.

A conviction of reckless driving is not necessarily included in a conviction of vehicular homicide while driving under the influence. *State v. Wiberg*, 1988-NMCA-022, 107 N.M. 152, 754 P.2d 529, cert. denied, 107 N.M. 106, 753 P.2d 352.

**No double jeopardy when facts fail "same evidence" test.** — Where the facts offered in municipal court to support a conviction for driving while under the influence of intoxicating liquors would not necessarily sustain a conviction for homicide by vehicle in district court, under the "same evidence" test there was no double jeopardy when the state sought to prosecute the defendant for homicide by vehicle. *State v. Tanton*, 1975-NMSC-057, 88 N.M. 333, 540 P.2d 813.

**Section does not preempt child abuse statute under general/specific statute rule.** — In a case involving convictions of abuse of a child under Section 30-6-1 NMSA 1978, and reckless driving under this section, the Court of Appeals erred in holding that under the general/specific statute rule the reckless driving statute was the more specific offense and preempted the child abuse statute. *State v. Guilez*, 2000-NMSC-020, 129 N.M. 240, 4 P.3d 1231.

**Guilty plea does provide substantial evidence of state of mind.** — A plea of guilty to reckless driving, together will all of the other facts and circumstances, creates an issue of fact for the jury to determine whether the accident was caused by defendant's

heedlessness or his reckless disregard of the rights of plaintiff. The reason is that it provides substantial evidence of defendant's state of mind. His plea of guilty admits that he drove his vehicle "heedlessly in willful or wanton disregard of the rights or safety of others". *Valencia v. Dixon*, 1971-NMCA-108, 83 N.M. 70, 488 P.2d 120, cert. denied, 83 N.M. 57, 488 P.2d 107.

## II. EVIDENCE.

### A. IN GENERAL.

**Evidence of driving conduct occurring before mishap admissible.** — In a prosecution for homicide by vehicle by driving recklessly, evidence of driving conduct that occurred immediately before the mishap was admissible under Rule 404(b), N.M.R. Evid. (now Rule 11-404), both to show defendant's mental state and also lack of accident. *State v. Sandoval*, 1975-NMCA-096, 88 N.M. 267, 539 P.2d 1029.

**Evidence of intoxication does not necessarily prove reckless driving.** — While evidence of intoxication might bear upon question of whether defendant was guilty of reckless driving, it does not necessarily prove it; it is a circumstance to be considered by the jury in deciding the issue. *State v. Sisneros*, 1938-NMSC-049, 42 N.M. 500, 82 P.2d 274.

**Evidence of intoxication need not be sufficient to support a conviction** for driving while under the influence pursuant to Section 66-8-102 NMSA 1978 in order to be admissible in a prosecution for violation of Section 64-22-3, 1953 Comp. (similar to this section), any evidence of drinking is relevant as a circumstance for the jury to consider on the issue of reckless driving. *State v. Sandoval*, 1975-NMCA-096, 88 N.M. 267, 539 P.2d 1029.

**Intoxication evidence but one circumstance to consider in reckless driving.** — In New Mexico, evidence of intoxication is but one circumstance to be considered by the jury in deciding the issue of reckless driving. Likewise, evidence of drinking has a tendency to make the existence of carelessness or lack of due caution more probable than it would be without the evidence and is thus relevant and but one circumstance to consider when the prosecution is for reckless driving. *State v. Sandoval*, 1975-NMCA-096, 88 N.M. 267, 539 P.2d 1029.

**"Appearing" intoxicated evidence admissible even though acquitted on influence charge.** — Even though defendant had been tried and acquitted for driving while under the influence of intoxicating liquors on the same facts under which he was charged with reckless driving, testimony by arresting officer that defendant appeared intoxicated was competent, as bearing on the issue of reckless driving, to prove all of the circumstances at the time of the alleged criminal act, including defendant's condition, movements and conduct. *State v. Platter*, 1959-NMSC-094, 66 N.M. 273, 347 P.2d 166.

### B. HOMICIDE BY VEHICLE.

**One who drives recklessly may be guilty of involuntary manslaughter.** — One who operates his automobile in wanton disregard of the rights and safety of others may be guilty of involuntary manslaughter. *State v. Turney*, 1937-NMSC-011, 41 N.M. 150, 65 P.2d 869.

**State must prove criminal negligence.** — Evidence was insufficient to sustain conviction of involuntary manslaughter where state failed to sustain burden of proving criminal negligence on part of accused who was charged with driving his automobile in a reckless manner at the time of the accident. *State v. Sisneros*, 1938-NMSC-049, 42 N.M. 500, 82 P.2d 274.

**Negligence must be direct and proximate cause of death.** — In order that a person may be guilty of a criminal homicide arising from the negligent operation of an automobile or its use for an unlawful purpose or in violation of law, it is uniformly held that it must be shown that such negligent operation, or use for an unlawful purpose or in violation of law, was the direct and proximate cause of the death; that is, that there was present a causal connection between the act and the death. *State v. Sisneros*, 1938-NMSC-049, 42 N.M. 500, 82 P.2d 274.

## C. ILLUSTRATIONS.

**Substantial evidence of reckless driving while willfully disregarding the rights and safety of others.** — Where a motorist, who was attempting to merge into the right lane of the highway, reported that defendant passed the motorist on the right side at a high speed; the police stopped defendant; defendant admitted that defendant had been driving eighty miles per hour; the officers gave defendant a verbal warning, told defendant to slow down before defendant hurt someone, and told defendant to follow the forty-five mile per hour speed limit which would decrease to thirty-five miles per hour; approximately two minutes after the traffic stop and one to one and one-half miles from the traffic stop, defendant collided with a vehicle that was crossing the highway, killing the passenger; defendant was driving in the left lane and could have avoided the collision by steering left into the oncoming traffic lane; instead, defendant veered to the right toward the other vehicle; the driver of the other vehicle testified that defendant appeared to be laughing as defendant veered into the other vehicle; and defendant was driving between fifty-four and fifty-nine miles an hour in a thirty-five miles per hour speed zone, there was substantial evidence that defendant was driving recklessly when defendant willfully disregarded the rights and safety of others. *State v. Munoz*, 2014-NMCA-101.

**Sufficient evidence to prove reckless driving.** — In delinquency proceedings where the child was charged with unlawful taking of a motor vehicle and reckless driving, there was sufficient evidence to support the jurors' reasonable determination that the child committed the delinquent act of reckless driving where the state, in addition to presenting Facebook messages in which the child apologized to the victim and claimed that she was intoxicated when she took the victim's vehicle, presented testimony from the victim that after getting out of his vehicle to hug the child goodbye, the child pushed

him aside and took off in his vehicle without his permission, that she failed to stop even though he ran after her, banged on the driver side window, and yelled for her to stop, and that the victim saw the child drive over a curb, knock down and drive over a fence, and heard the sound of the vehicle strike a dumpster before he lost sight of the vehicle. *State v. Jesenya O.*, 2021-NMCA-030, 493 P.3d 418, *rev'd on other grounds by* 2022-NMSC-014.

**Excessive speed in residential neighborhood in wrong lane.** — Where the evidence was undisputed that defendant drove 70 m.p.h. in a residential neighborhood, in a 25 to 35 m.p.h. zone, and on the wrong side of the highway, and smashed into decedent's car and killed him, a jury would have a right to believe that the collision was not accidental, and that the defendant was driving in a careless manner and in wanton disregard of the rights or safety of others, or at a speed or in a manner so as to endanger any person, and the evidence was sufficient to submit to the jury homicide by vehicle while operating in a reckless manner. *State v. Richerson*, 1975-NMCA-027, 87 N.M. 437, 535 P.2d 644, cert. denied, 87 N.M. 450, 535 P.2d 657.

**"Showing off" at high speeds on heavily traveled street.** — Evidence that at the precise time of the accident defendant was traveling at 45 m.p.h. in a 30 m.p.h. zone on a heavily traveled main street, that the decedent's vehicle drove out onto the main street after stopping at a stop sign, and that defendant revved up his engine, slammed on his brakes, left 74 feet of skid marks and hit the decedent's vehicle broadside, along with abundant evidence from many witnesses that during the hours and minutes immediately preceding the accident, defendant was engaged in showing off a "hot-rod" type vehicle (driving up and down the street at high speeds, switching in and out of lanes, straddling lanes, turning corners very rapidly and making illegal U-turns, in addition to alternately revving up and slowing down the engine and attempting to "leave rubber" when he passed young members of the opposite sex walking along the street, and drinking) showed, without doubt, that defendant was operating his vehicle carelessly and heedlessly in willful and wanton disregard of the rights and safety of others, and without due caution and circumspection and in a manner so as to be likely to endanger persons and property, and was sufficient to sustain the conviction for homicide by vehicle while driving recklessly. *State v. Sandoval*, 1975-NMCA-096, 88 N.M. 267, 539 P.2d 1029.

**Intoxication and mere running of red light may be reckless.** — This court reviews evidence in a conviction for homicide by vehicle in the light most favorable to the verdict; thus, while the mere running of a red light would not, alone, constitute reckless driving, the circumstances of intoxication attending this act might reasonably lead a jury to a finding of recklessness. *State v. Myers*, 1975-NMCA-055, 88 N.M. 16, 536 P.2d 280.

**Weaving back and forth across highway which customarily carries heavy traffic** while traveling at a moderate rate of speed through a series of curves constituted substantial evidence of reckless driving. *State v. Platter*, 1959-NMSC-094, 66 N.M. 273, 347 P.2d 166.

**It is not negligence to drive through fog if ordinary care under the circumstances is exercised;** but the degree of care varies with the denseness of the fog and the danger to be avoided. *Silva v. Waldie*, 1938-NMSC-048, 42 N.M. 514, 82 P.2d 282.

**Law reviews.** — For comment, "Two-Tiered Test for Double Jeopardy Analysis in New Mexico," see 10 N.M.L. Rev. 195 (1979-80).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 133, 312 to 320, 381, 383.

Protest by guest against driver's manner of operation of motor vehicle as terminating host-guest relationship, 25 A.L.R.2d 1448.

Automobile operator's inexperience or lack of skill as affecting his liability to passenger, 43 A.L.R.2d 1155.

Admissibility in action involving motor vehicle accident, of evidence as to manner in which participant was driving before reaching scene of accident, 46 A.L.R.2d 9.

"Residence district," "business district," "school area," and the like, in statutes and ordinances regulating speed of motor vehicles, 50 A.L.R.2d 343.

Speed alone or in connection with other circumstances, as gross negligence, wantonness, recklessness, or the like, under automobile guest statute, 6 A.L.R.3d 769.

Gross negligence, recklessness, or the like, within "guest" statute, predicated upon conduct in passing cars ahead or position of car on wrong side of the road, 6 A.L.R.3d 832.

Reckless driving as lesser included offense of driving while intoxicated or similar charge, 10 A.L.R.4th 1252.

Motor vehicle operator's liability for accident occurring while driving with vision obscured by smoke or steam, 32 A.L.R.4th 933.

Statute prohibiting reckless driving: definiteness and certainty, 52 A.L.R.4th 1161.

60 C.J.S. Motor Vehicles § 164.5; 61A C.J.S. Motor Vehicles §§ 609-624.

Civil liability arising from use of cell phone while driving. 36 A.L.R.6th 443.

## 66-8-114. Careless driving.

A. Any person operating a vehicle on the highway shall give his full time and entire attention to the operation of the vehicle.

B. Any person who operates a vehicle in a careless, inattentive or imprudent manner, without due regard for the width, grade, curves, corners, traffic, weather and road conditions and all other attendant circumstances is guilty of a misdemeanor.

**History:** 1953 Comp., § 64-22-3.1, enacted by Laws 1969, ch. 169, § 12; recompiled as 1953 Comp., § 64-8-114, by Laws 1978, ch. 35, § 522.

## ANNOTATIONS

**Cross references.** — For the penalty for a misdemeanor, *see* 66-8-7 NMSA 1978.

**Section not vague.** — This section prohibits driving while not paying enough attention under the existing circumstances; the fact that one cannot predict what the circumstances might be does not make the section vague. *State v. Baldonado*, 1978-NMCA-111, 92 N.M. 272, 587 P.2d 50, cert. denied, 92 N.M. 260, 586 P.2d 1089.

**Words of section are clear and definite,** and give fair warning of the proscribed activity. *State v. Baldonado*, 1978-NMCA-111, 92 N.M. 272, 587 P.2d 50, cert. denied, 92 N.M. 260, 586 P.2d 1089.

**Ordinary meaning of section's words apply.** — Since no statutory definitions of "careless," "inattentive" or "imprudent" are given in this section, their ordinary meanings apply. *State v. Baldonado*, 1978-NMCA-111, 92 N.M. 272, 587 P.2d 50, cert. denied, 92 N.M. 260, 586 P.2d 1089.

**Definition of "careless driving"** encompasses driving straight through an intersection with one's turn signal on. *State v. Benjamin C.*, 1989-NMCA-075, 109 N.M. 67, 781 P.2d 795, cert. denied, 109 N.M. 54, 781 P.2d 782.

**"Highway."** — Careless driving, as defined in this section, cannot be committed in a parking lot, because a parking lot does not fall within the plain meaning or the statutory definition of "highway." *State v. Brennan*, 1998-NMCA-176, 126 N.M. 389, 970 P.2d 161, cert. denied, 126 N.M. 532, 972 P.2d 351.

**DWI test predicated on careless driving stop in parking lot valid.** — Although careless driving cannot be committed in a parking lot, police officer who witnessed defendant driving at an excessive speed in a crowded parking lot had reasonable, although mistaken, suspicion to stop defendant, and, thus, such stop could be the predicate for a DWI test. *State v. Brennan*, 1998-NMCA-176, 126 N.M. 389, 970 P.2d 161, cert. denied, 126 N.M. 532, 972 P.2d 351.

**Warrantless home arrest not merited.** — The minor offenses of careless driving and leaving the scene of an accident do not merit the extraordinary recourse of warrantless home arrest. *Howard v. Dickerson*, 34 F.3d 978 (10th Cir. 1994).

**There is no such crime as homicide by vehicle by careless driving.** *State v. Yazzie*, 1993-NMCA-101, 116 N.M. 83, 860 P.2d 213, *overruled on other grounds by State v. Yarborough*, 1996-NMSC-068, 122 N.M. 596, 930 P.2d 131.

**Section not a basis for involuntary manslaughter.** — Involuntary manslaughter cannot be based upon a violation of the careless driving statute, which requires a showing of only civil negligence. *State v. Yarborough*, 1995-NMCA-116, 120 N.M. 669, 905 P.2d 209, *aff'd*, 1996-NMSC-068, 122 N.M. 596, 930 P.2d 131.

**Proof of careless driving.** — Careless driving requires a showing of only ordinary or civil negligence, and is therefore an improper predicate offense for involuntary manslaughter. *State v. Yarborough*, 1996-NMSC-068, 122 N.M. 596, 930 P.2d 131.

**Duress does not negate an essential element of the charged offense.** — Where defendant was charged with aggravated DWI and careless driving, and where defendant claimed that circumstances required her to drive in violation of the law, the metropolitan court did not err in refusing defendant's tendered instruction that imbedded the absence of duress as an essential element of careless driving, because a defendant pleading duress is not attempting to disprove a requisite mental state, but defendants in that context are instead attempting to show that they ought to be excused from criminal liability because of the circumstances surrounding their intentional act. *State v. Percival*, 2017-NMCA-042.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 321 to 323.

Physical defect, illness, drowsiness, or falling asleep of motor vehicle operator as affecting liability for injury, 28 A.L.R.2d 12, 93 A.L.R.3d 326, 1 A.L.R.4th 556.

Liability for injury occurring when clothing of one outside motor vehicle is caught as vehicle is put in motion, 43 A.L.R.2d 1282.

Overcrowding motor vehicle or riding in unusual position thereon as affecting liability for injury or damage, 44 A.L.R.2d 238.

Gross negligence, recklessness, or the like, within "guest" statute, predicated upon conduct in passing cars ahead or position of car on wrong side of the road, 6 A.L.R.3d 832.

Admissibility of evidence of habit, customary behavior, or reputation as to care of motor vehicle driver or occupant, on question of his care at time of occurrence giving rise to his injury or death, 29 A.L.R.3d 791.

Motor vehicle operator's liability for accident occurring while driving with vision obscured by smoke or steam, 32 A.L.R.4th 933.

Civil liability arising from use of cell phone while driving. 36 A.L.R.6th 443

## 66-8-115. Racing on highways; exception.

A. Unless written permission setting out pertinent conditions is obtained from the chief of the New Mexico state police, and then only in accordance with such conditions, no person shall drive a vehicle on a highway in any race, speed competition or contest, drag race or acceleration contest, test of physical endurance, exhibition of speed or acceleration or for the purpose of making a speed record, whether or not the speed is in excess of the maximum speed prescribed by law, and no person shall in any manner participate in any such race, drag race, competition, contest, test or exhibition.

B. As used in this section:

(1) "drag race" means the operation of two or more vehicles from a point side by side at accelerating speeds in a competitive attempt to outdistance each other, or the operation of one or more vehicles over a common selected course from the same point to the same point for the purpose of comparing the relative speeds or power of acceleration of the vehicle or vehicles within a certain distance or time limit; and

(2) "race" means the use of one or more vehicles in a manner to outgain or outdistance another vehicle, prevent another vehicle from passing, arrive at a given destination ahead of another vehicle or test the physical stamina or endurance of drivers over long-distance routes.

C. No official or agency of the state of New Mexico shall be held liable in any civil action in connection with the permission which is authorized in this section.

D. Any person who violates any provision of this section is guilty of a misdemeanor.

**History:** 1953 Comp., § 64-22-3.2, enacted by Laws 1969, ch. 169, § 13; 1973, ch. 172, § 1; recompiled as 1953 Comp., § 64-8-115, by Laws 1978, ch. 35, § 523.

**ANNOTATIONS**

**Cross references.** — For the penalty for a misdemeanor, *see* 66-8-7 NMSA 1978.

**Sufficient evidence of racing on highways.** — Where the arresting officer observed defendant stopped at a red light, and as soon as the traffic light turned green, observed defendant rev his engine, causing his tires to peel out, squeal, and produce blue smoke, and dart out into the intersection accelerating quickly in front of other traffic, there was sufficient evidence to support defendant's conviction for racing on highways by driving in an exhibition of speed or acceleration. The use of the disjunctive "or" in the statute makes plain that the statute may be violated in a number of ways, by engaging in a race, drag race, competition, contest, test, or exhibition, and based on the clear and unambiguous statutory language, exhibition of speed or acceleration does not require

an agreement or competition among drivers. *State v. Gonzales*, 2019-NMCA-036, cert. denied.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Liability of participant in unauthorized highway race for injury to third person directly caused by other racer, 13 A.L.R.3d 431.

Validity, construction, and application of criminal statutes specifically directed against racing of automobiles on public streets or highways (drag racing), 24 A.L.R.3d 1286.

## 66-8-116. Penalty assessment misdemeanors; definition; schedule of assessments.

A. As used in the Motor Vehicle Code and the Boat Act [Chapter 66, Article 12 NMSA 1978], "penalty assessment misdemeanor" means violation of any of the following listed sections of the NMSA 1978 for which, except as provided in Subsections D through F of this section, the listed penalty assessment is established:

| COMMON NAME OF OFFENSE | SECTION VIOLATED | PENALTY ASSESSMENT |
|---|---|---|
| Vehicles subject to registration | 66-3-1 | $ 50.00 |
| Improper display of registration plate | 66-3-18 | 25.00 |
| Failure to notify of change of name or address | 66-3-23 | 25.00 |
| Lost or damaged registration, plate or title | 66-3-24 | 25.00 |
| Horseless carriage registration | 66-3-27 | 25.00 |
| Transfer of registration and title | 66-3-103 | 25.00 |
| Expiration of dealer plates | 66-3-403 | 25.00 |
| Special registration plates | 66-3-409, 66-3-412.1, 66-3-413, 66-3-415, 66-3-417, 66-3-419, 66-3-421, 66-3-422, 66-3-424.4, 66-3-424.5, 66-3-424.7, 66-3-424.9, 66-3-424.13, 66-3-424.16 and 66-3-424.28 | 75.00 |
| Bicycle laws | 66-3-701 through 66-3-707 | 50.00 |
| No license display | 66-5-16 | 25.00 |
| Failure to change address or name on license | 66-5-22 | 25.00 |
| Permitting unauthorized minor to drive | 66-5-40 | 50.00 |
| Permitting unauthorized person to drive | 66-5-41 | 25.00 |
| Failure to obey sign | 66-7-104 | 25.00 |
| Failure to obey signal | 66-7-105 | 25.00 |
| Pedestrian signs and signals | 66-7-106 through 66-7-108 | 25.00 |
| Speeding | 66-7-301 | |
| (1) up to and including ten miles an hour over the speed limit | | 25.00 |

| | | |
|---|---|---|
| (2) from eleven up to and including fifteen miles an hour over the speed limit | | 30.00 |
| (3) from sixteen up to and including twenty miles an hour over the speed limit | | 65.00 |
| (4) from twenty-one up to and including twenty-five miles an hour over the speed limit | | 100.00 |
| (5) from twenty-six up to and including thirty miles an hour over the speed limit | | 125.00 |
| (6) from thirty-one up to and including thirty-five miles an hour over the speed limit | | 150.00 |
| (7) more than thirty-five miles an hour over the speed limit | | 200.00 |
| Unfastened safety belt | 66-7-372 | 25.00 |
| Child not in restraint device or seat belt | 66-7-369 | 25.00 |
| Minimum speed | 66-7-305 | 25.00 |
| Speeding | 66-7-306 | 25.00 |
| Improper starting | 66-7-324 | 25.00 |
| Improper backing | 66-7-354 | 25.00 |
| Improper lane | 66-7-308 | 25.00 |
| Improper lane | 66-7-313 | 25.00 |
| Improper lane | 66-7-316 | 25.00 |
| Improper lane | 66-7-317 | 25.00 |
| Improper lane | 66-7-319 | 25.00 |
| Improper passing | 66-7-309 through 66-7-312 | 25.00 |
| Improper passing | 66-7-315 | 25.00 |
| Controlled access violation | 66-7-320 | 25.00 |
| Controlled access violation | 66-7-321 | 25.00 |
| Improper turning | 66-7-322 | 25.00 |
| Improper turning | 66-7-323 | 25.00 |
| Improper turning | 66-7-325 | 25.00 |
| Following too closely | 66-7-318 | 25.00 |
| Failure to yield | 66-7-328 through 66-7-331 | 25.00 |
| Failure to yield | 66-7-332 | 50.00 |
| Failure to yield | 66-7-332.1 | 25.00 |
| Pedestrian violation | 66-7-333 through 66-7-340 | 25.00 |
| Failure to stop | 66-7-342 and 66-7-344 through 66-7-346 | 25.00 |
| Railroad-highway grade crossing violation | 66-7-341 and 66-7-343 | 150.00 |
| Passing school bus | 66-7-347 | 100.00 |
| Failure to signal | 66-7-325 through 66-7-327 | 25.00 |
| Riding on motorcycles | 66-7-355 | 100.00 |
| Video screens in automobiles | 66-7-358 | 25.00 |
| Driving on mountain highways | 66-7-359 | 25.00 |
| Coasting prohibited | 66-7-360 | 25.00 |
| Animals on highway at night | 66-7-363 | 50.00 |
| Failure to secure load | 66-7-407 | 100.00 |

| | | |
|---|---|---|
| Operation without oversize-overweight permit | 66-7-413 | 50.00 |
| Transport of reducible load with special permit more than six miles from a border crossing | 66-7-413 | 100.00 |
| Driving while license administratively suspended | 66-5-39.2 | 25.00 |
| Improper equipment | 66-3-801 through 66-3-840 and 66-3-842 through 66-3-851 | 50.00 |
| Improper equipment | 66-3-901 | 50.00 |
| Improper emergency signal | 66-3-853 through 66-3-857 | 25.00 |
| Minor on motorcycle without helmet | 66-7-356 | 300.00 |
| Operation interference | 66-7-357 | 50.00 |
| Littering | 66-7-364 | 300.00 |
| Improper parking | 66-7-349 through 66-7-352 and 66-7-353 | 25.00 |
| Improper parking | 66-3-852 | 25.00 |
| Riding in or towing occupied house trailer | 66-7-366 | 25.00 |
| Improper opening of doors | 66-7-367 | 25.00 |
| No slow-moving vehicle emblem or flashing amber light | 66-3-887 | 25.00 |
| Open container-first violation | 66-8-138 | 25.00 |
| Texting while driving- | | |
| (1) first violation | 66-7-374 | 25.00 |
| (2) second and subsequent violation | | 50.00 |
| Using a handheld mobile communication device while driving a commercial motor vehicle | 66-7-375 | |
| (1) first violation | | 25.00 |
| (2) second and subsequent violation | | 50.00 |
| Improper use of travel lane | 66-7-376 | 250.00. |

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

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

D. The penalty assessment for speeding in violation of Paragraph (5) of Subsection A of Section 66-7-301 NMSA 1978 is twice the penalty assessment established in Subsection A of this section for the equivalent miles per hour over the speed limit.

E. Upon a second conviction for operation without a permit for excessive size or weight pursuant to Section 66-7-413 NMSA 1978, the penalty assessment shall be two

hundred fifty dollars ($250). Upon a third or subsequent conviction, the penalty assessment shall be five hundred dollars ($500).

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

**History:** 1953 Comp., § 64-8-116, enacted by Laws 1978, ch. 35, § 524; 1981, ch. 360, § 8; 1983, ch. 134, § 7; 1985, ch. 131, § 5; 1987, ch. 332, § 2; 1988, ch. 121, § 5; 1989, ch. 316, § 1; 1989, ch. 317, § 3; 1989, ch. 318, § 34; 1989, ch. 319, § 11; 1989, ch. 320, § 4; 1990, ch. 120, § 37; 1991, ch. 192, § 9; 1995, ch. 135, § 24; 2000, ch. 22, § 2; 2002, ch. 71, § 2; 2003, ch. 51, § 16; 2005, ch. 10, § 2; 2006, ch. 48, § 3; 2007, ch. 209, § 12; 2009, ch. 208, § 1; 2011, ch. 58, § 2; 2013, ch. 205, § 1; 2014, ch. 5, § 2; 2016, ch. 63, § 4; 2018, ch. 74, § 53; 2019, ch. 224, § 4; 2023, ch. 96, § 2.

## ANNOTATIONS

**Cross references.** — For payment in foreign currency under the Motor Vehicle Code, *see* 66-6-36 NMSA 1978.

For the penalty for a misdemeanor, *see* 66-8-7 NMSA 1978.

For the punishment of children for traffic violations, *see* 32A-2-29 NMSA 1978.

For local governments correction fund, *see* 33-3-25 NMSA 1978.

For court automation fund, *see* 34-9-10 NMSA 1978.

For court automation fee, *see* 35-6-1 NMSA 1978, 66-8-116.3 NMSA 1978, and 66-8-119 NMSA 1978.

**The 2023 amendment,** effective July 1, 2023, provided a penalty assessment of $250.00 for the offense of Improper use of travel lane; and in Subsection A, added "Improper use of travel lane 66-7-376 . . . . 250.00"at the end of the Subsection.

**The 2019 amendment,** effective October 1, 2019, established a penalty assessment of $50 for vehicles that are not registered as required; in Subsection A, after the penalty assessment headings, added "Vehicles subject to registration 66-3-18 $50.00", and added "Driving while license administratively suspended 66-5-39.2 25.00".

**The 2018 amendment,** effective July 1, 2018, provided the penalty assessments for certain violations of the Motor Vehicle Code; in Subsection A, after "66-3-24", deleted "20.00" and added "25.00"; added new penalty assessments for "Horseless carriage registration", "Transfer of registration and title", "Expiration of dealer plates", "Special

registration plates", "Bicycle laws", "No license display", and "Failure to change address or name on license" and added the corresponding statutory references; after "66-7-104", deleted "10.00" and added "25.00", and after "66-7-105", deleted "10.00" and added "25.00"; added new penalty assessments for "Pedestrian signs and signals" and added the corresponding statutory references; after "Speeding (1) up to and including ten miles an hour over the speed limit", deleted "15.00" and added "25.00"; increased the penalty assessment to "25.00" for violations of "66-7-305", "66-7-306", "66-7-324", "66-7-354", "66-7-308", "66-7-313", 66-7-316", 66-7-317", "66-7-319", "66-7-309 through 66-7-312", "66-7-315", "66-7-320", "66-7-321", "66-7-322", "66-7-323", "66-7-325", "66-7-318", "66-7-328 through 66-7-331"; after "66-7-333", deleted "10.00" and deleted "Pedestrian violation" and added "through"; after "66-7-340", deleted "10.00" and added "25.00"; after "66-7-346", deleted "10.00" and added "25.00"; after "66-7-327", deleted "10.00" and added "25.00"; added new penalty assessments for "Riding on motorcycles", "Video screens in automobiles", "Driving on mountain highways", "Coasting prohibited", "Animals on highway at night" and added the corresponding statutory references; after "66-3-801", added "through 66-3-840 and 66-3-842"; after "66-3-851", deleted "25.00" and added "50.00"; after "66-3-901", deleted "20.00" and added "50.00"; after "66-3-857", deleted "10.00" and added "25.00", after "66-7-353", deleted "5.00" and added "25.00"; after "66-3-852", deleted "5.00" and added "25.00"; deleted the penalty assessment for "Failure to dim lights"; after "66-7-366", deleted "5.00" and added "25.00"; after "66-7-367", deleted "5.00" and added "25.00"; after "Texting while driving", added paragraph designation "(1)", after "66-7-374 25.00", deleted the penalty assessment for "Texting while driving subsequent violation 66-7-374" and added "(2) second and subsequent violation"; after "while driving a commercial motor vehicle", deleted "Section 1 of this 2016 act" and added "66-7-375", and deleted "25.00 Using a handheld mobile communication device while driving a commercial motor vehicle subsequent violation Section 1 of this 2016 act"; and added "(1) first violation 25.00 (2) second and subsequent violation"; and in Subsection D, after "Paragraph", deleted "(4)" and added "(5)".

**The 2016 amendment,** effective May 18, 2016, provided penalty assessments for using a handheld mobile communication device while driving a commercial motor vehicle; in Subsection A, after "Texting while driving - first violation", deleted "Section 1 of this 2014 act" and added "66-7-374", after "Texting while driving – subsequent violation", deleted "Section 1 of this 2014 act" and added "66-7-374", and after the penalty assessment for "Texting while driving – subsequent offense", added "Using a handheld mobile communication device while driving a commercial motor vehicle Section 1 of this 2016 act" "25.00" and "Using a handheld mobile communication device while driving a commercial motor vehicle – subsequent violation Section 1 of this 2016 act" "50.00".

**The 2014 amendment,** effective July 1, 2014, provided penalty assessments for texting while driving; and in Subsection A, at the end of the subsection, after the penalty assessment for "Open container - first violation", added penalty assessments for "Texting while driving - first violation Section 1 of this 2014 act 25.00" and "Texting while driving - subsequent violation Section 1 of this 2014 act 50.00".

**The 2013 amendment,** effective July 1, 2013, provided penalty assessments for additional motor vehicle violations; in Subsection A, added penalty assessments for improper display of registration plate, failure to notify of change of name or address, lost or damaged registration plate or title, permitting unlicensed person to drive, and minor on motorcycle without helmet; increased the penalty assessment for permitting unauthorized minor to drive from ten ($10.00) to fifty dollars ($50.00); and increased the penalty assessment for improper equipment from ten ($10.00) to twenty five ($25.00) dollars.

**The 2011 amendment,** effective July 1, 2011, in Subsection A, added a penalty assessment of $100 for violation of Section 66-7-413 NMSA 1978, which prohibits the transport of a reducible load with a special permit more than six miles from a border crossing; and add Subsection F to impose a penalty assessment of $500 for a second violation and $1,000 for a third violation of Section 66-7-413 NMSA 1978.

**The 2009 amendment,** effective June 19, 2009, increased the penalty for a railroad-highway grade crossing violation from $10 to $150.

**The 2007 amendment,** effective July 1, 2007, added Subsection E.

**The 2006 amendment,** effective May 17, 2006, deleted the penalty assessment in Subsection A for improper parking under Section 66-7-352.5 NMSA 1978.

**The 2005 amendment,** effective June 17, 2005, increased the penalty assessment for failure to yield upon approach of an authorized emergency vehicle from $10.00 to $50.00 in violation of Section 66-7-332 NMSA 1978.

**The 2003 amendment,** effective March 19, 2003, in the table, rewrote the "Failure to stop" entry and added "Railroad-highway grade crossing violation" entry; in Subsection C, substituted "a fine" for "no fine" preceding "imposed upon later", inserted "not" preceding "exceed the penalty", deleted "no" preceding "probation imposed upon", and inserted "not" near the end.

**The 2002 amendment,** effective May 15, 2002, in Subsection A, inserted the exception clause in the introductory language and lowered the fines in Paragraphs (3) and (4) under "Speeding" in the table; and added Subsection D.

**The 2000 amendment,** effective July 1, 2000, in Subsection A, deleted the fines for "Litterbugging", violating Sections 30-8-4 ($50.00) and 30-8-10 ($100.00), changed the common name of the violation "Litterbugging" to "Littering", which violates 66-7-364 NMSA 1978, and increased the fine from $100.00 to $300.00.

**The 1995 amendment,** effective June 16, 1995, increased the fine for a violation of Section 66-7-352.5 from $25.00 to $50.00.

**The 1991 amendment,** effective June 14, 1991, in Subsection A, added Paragraphs (5) to (7) under the offense of "Speeding", inserted "66-7-532 and" in the "SECTION VIOLATED" column for the offense of "Improper parking" the first time it appears, added the offense of "Improper parking" the second time it appears and added the offense of "Open container - first violation"; in Subsection B, deleted former Paragraph (1) which read "of speeding in excess of twenty-five miles an hour in excess of the speed limit" and made related and minor stylistic changes; and, in Subsection C, substituted "and no probation imposed upon a suspended or deferred sentence shall exceed ninety days" for "nor shall the fine imposed be suspended or deferred" at the end.

**The 1990 amendment,** effective July 1, 1990, in Subsection A, deleted "and 66-7-302" in the "section violated" column opposite "Speeding," and substituted "common name of offense," "section violated", and "penalty assessment" for "Child not in restraint device or seat belt," "Failure to secure load" and "Operation without oversize-overweight permit"; and, in Subsection C, added "nor shall the fine imposed be suspended or deferred" at the end.

**The 1989 amendment,** effective July 1, 1989, added the entry for failure to obey sign; under the entries for speeding, in Item (1), substituted "up to and including ten miles an hour" for "up to fifteen miles an hour", in Item (2), substituted "from eleven up to and included "fifteen miles an hour" for "from fifteen to twenty-five miles an hour", while in the Penalty column therefor substituted "30.00" for "25.00", and added Items (3) and (4) and the Penalty Assessments therefor; in the entry for passing school bus, in the Penalty column, substituted "100.00" for "25.00"; in the entry for improper equipment, in the Penalty column, substituted "200.00" for "100.00"; and deleted former Subsections D and E, relating to a penalty assessment of $10.00 to help defray local government corrections and also an assessment of a court automation fee of $3.00.

**The 1988 amendment,** effective March 8, 1988, substituted "ten dollars ($10.00)" for "five dollars ($5.00)" in Subsection D and added Subsection E.

**The 1987 amendment,** effective June 19, 1987, in the table, in the fourth entry in the middle column substituted "Section 66-7-372" for "Section 3 of the Safety Belt Use Act" and added the twenty-third line to the table which provides the penalty assessment for failure to yield under 66-7-332.1 NMSA 1978.

**System of penalty assessment procedures is entirely statutory in origin.** 1969 Op. Att'y Gen. No. 69-88.

**Juvenile has option of assessment or appearing in juvenile court.** — The state police may give a juvenile the option of accepting a penalty assessment on a traffic violation or appearing in juvenile court. 1972 Op. Att'y Gen. No. 72-12.

**Prosecution of complaint filed by person not law enforcement officer.** — If an offense defined as a "penalty assessment misdemeanor" is committed and the offender is not arrested by a police officer, then a person other than a law enforcement officer

may file a criminal complaint in accordance with the procedure established for all misdemeanors, and the prosecution of such a complaint would be undertaken at the discretion of the district attorney. 1981 Op. Att'y Gen. No. 81-18.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — What constitutes "minor traffic infraction" excludable from calculation of defendant's criminal history under United States Sentencing Guidelines § 4A1.2(c)(2). 113 A.L.R. Fed 561.

## 66-8-116.1. Penalty assessment misdemeanors; oversize load.

As used in the Motor Vehicle Code [66-1-1 NMSA 1978] and the Motor Carrier Act [65-2A-1 to 65-2A-41 NMSA 1978], "penalty assessment misdemeanor" means, in addition to the definition of that term in Section 66-8-116 NMSA 1978, violation of the following listed sections of the NMSA 1978 for which the listed penalty is established:

| COMMON NAME OF OFFENSE | SECTION VIOLATED | PENALTY ASSESSMENT |
|---|---|---|
| Oversize load 1,000 to 3,000 pounds | 66-7-411 | $ 50.00 |
| Oversize load 3,001 to 4,000 pounds | 66-7-411 | 80.00 |
| Oversize load 4,001 to 5,000 pounds | 66-7-411 | 150.00 |
| Oversize load 5,001 to 6,000 pounds | 66-7-411 | 250.00 |
| Oversize load 6,001 to 7,000 pounds | 66-7-411 | 400.00 |
| Oversize load 7,001 to 8,000 pounds | 66-7-411 | 550.00 |
| Oversize load 8,001 to 9,000 pounds | 66-7-411 | 700.00 |
| Oversize load 9,001 to 10,000 pounds | 66-7-411 | 850.00 |
| Oversize load over 10,000 pounds | 66-7-411 | 1,000.00. |

**History:** Laws 1989, ch. 319, § 12; 2007, ch. 209, § 13.

**ANNOTATIONS**

**The 2007 amendment,** effective July 1, 2007, doubled the penalty assessments.

## 66-8-116.2. Penalty assessment misdemeanors; Motor Carrier Act.

As used in the Motor Vehicle Code [66-1-1 NMSA 1978] and the Motor Carrier Act [65-2A-1 to 65-2A-41 NMSA 1978], "penalty assessment misdemeanor" means, in addition to the definitions of that term in Sections 66-8-116 and 66-8-116.1 NMSA 1978, violation of the following listed sections of the NMSA 1978 for which, except as provided in Subsection E of this section, the listed penalty is established:

A. GENERAL

| COMMON NAME OF OFFENSE | SECTION VIOLATED | PENALTY ASSESSMENT |
|---|---|---|
| Failure to register motor carrier | 66-3-1.1 | $300.00 |
| Failure to carry tax identification permit | 65-1-26 | 300.00 |
| Failure of motor carrier to comply with weight distance requirements of the Weight Distance Tax Act | 65-1-26 | |
| (1) first conviction | | 300.00 |
| (2) second conviction, within ten years of the first conviction | | 500.00 |
| (3) third or subsequent conviction, within ten years of the first conviction | | 1,000.00 |
| Failure to comply with public regulation commission rules and regulations | 65-2A-7 | 50.00 |
| Failure to carry single state registration receipt issued by a base state | 65-2A-7 | 50.00 |
| Failure to register with a base state under the Federal Unified Carrier Registration Act | | |

| | | |
|---|---|---|
| of 2005 | 65-2A-16 | 50.00 |
| Failure to stop at designated registration place | 65-5-1 | 100.00 |
| Failure to obtain proper clearance certificates | 65-5-3 | 100.00. |

B. VEHICLE OUT-OF-SERVICE VIOLATIONS

| COMMON NAME OF OFFENSE | SECTION VIOLATED | PENALTY ASSESSMENT |
|---|---|---|
| Absence of braking action | 65-3-9 | $100.00 |
| Damaged brake lining or pads | 65-3-9 | 50.00 |
| Loose or missing brake components | 65-3-12 | 100.00 |
| Inoperable breakaway braking system | 65-3-12 | 50.00 |
| Defective or damaged brake tubing | 65-3-12 | 50.00 |
| Inoperative low pressure warning device | 65-3-9 | 50.00 |
| Reservoir pressure not maintained | 65-3-12 | 100.00 |
| Inoperative tractor protection valve | 65-3-9 | 100.00 |
| Damaged or loose air compressor | 65-3-12 | 100.00 |

| | | |
|---|---|---|
| Audible air leak at brake | | |
| chamber | 65-3-12 | 50.00 |
| Defective safety devices-- | | |
| chains or hooks | 65-3-9 | 100.00 |
| Defective towing or coupling | | |
| devices | 65-3-9 | 100.00 |
| Defective exhaust systems | 65-3-9 | 30.00 |
| Frame defects--trailers | 65-3-12 | 100.00 |
| Frame defects--other | 65-3-9 | 100.00 |
| Defective fuel systems | 65-3-9 | 50.00 |
| Missing or inoperative | | |
| lamps | 65-3-9 | 25.00 |
| Missing lamps on projecting | | |
| loads | 65-3-9 | 50.00 |
| Missing or inoperative | | |
| turn signal | 65-3-9 | 25.00 |
| Unsafe loading | 65-3-8 | 100.00 |
| Possession of radar detector | | |
| in commercial motor carrier | | |
| vehicle | 65-3-8 | 100.00 |
| Possession of alcoholic | | |
| beverage in commercial | | |

| | | |
|---|---|---|
| motor carrier vehicle | 65-3-8 | 200.00 |
| Excessive steering wheel play | 65-3-9 | 100.00 |
| Steering column defects | 65-3-9 | 100.00 |
| Steering box or steering system defects | 65-3-9 | 100.00 |
| Suspension system defects | 65-3-9 | 50.00 |
| Defective springs or spring assembly | 65-3-9 | 50.00 |
| Defective tires--steering axle | 65-3-9 | 100.00 |
| Defective tires--other axles | 65-3-9 | 30.00 |
| Defective wheels and rims | 65-3-9 | 50.00 |
| Defective or missing windshield wipers | 65-3-9 | 30.00 |
| Defective or inoperative emergency exit--bus | 65-3-9 | 100.00. |

C. DRIVER OUT-OF-SERVICE VIOLATIONS

| COMMON NAME OF OFFENSE | SECTION VIOLATED | PENALTY ASSESSMENT |
|---|---|---|
| Driver's age | 65-3-7 | $30.00 |
| Driver not licensed for | | |

| | | |
|---|---|---|
| type of vehicle being | | |
| operated | 65-3-7 | 30.00 |
| Failure to have valid | | |
| commercial driver's license | | |
| in possession | 66-5-59 | 30.00 |
| No waiver of physical | | |
| disqualification | | |
| in possession | 65-3-7 | 30.00 |
| Sickness or fatigue | 65-3-8 | 100.00 |
| Driver disqualification | 65-3-7 | 500.00 |
| Exceeding the 10-hour | | |
| driving rule for | | |
| passenger carrier | | |
| transportation | 65-3-11 | 100.00 |
| Exceeding the 11-hour | | |
| driving rule for property | | |
| carrier transportation | 65-3-11 | 100.00 |
| Exceeding the 14-hour on | | |
| duty rule for property | | |
| carrier transportation | 65-3-11 | 100.00 |
| Exceeding the 15-hour on | | |
| duty rule for passenger | | |
| carrier transportation | 65-3-11 | 100.00 |

| | | |
|---|---|---|
| Exceeding the 60 hours in 7 days on duty rule | 65-3-11 | 100.00 |
| Exceeding the 70 hours in 8 days on duty rule | 65-3-11 | 100.00 |
| False log book | 65-3-11 | 100.00 |
| No log book | 65-3-11 | 100.00 |
| No record for previous 7 days | 65-3-11 | 100.00. |

D. HAZARDOUS MATERIALS OUT-OF-SERVICE VIOLATIONS

| COMMON NAME OF OFFENSE | SECTION VIOLATED | PENALTY ASSESSMENT |
|---|---|---|
| Placarding violations | 65-3-13 | $250.00 |
| Cargo tank not meeting specifications | 65-3-13 | 250.00 |
| Internal valve operation violations | 65-3-13 | 250.00 |
| Hazardous materials packaging violations | 65-3-13 | 250.00 |
| Insecure load--hazardous materials | 65-3-13 | 250.00 |
| Shipping papers violations | 65-3-13 | 30.00 |
| Shipment of forbidden combination of hazardous materials | 65-3-13 | 250.00 |

| | | |
|---|---|---|
| No hazardous waste manifest | 65-3-13 | 30.00 |
| Bulk packaging marking violations | 65-3-13 | 30.00 |
| Cargo tank marking violations | 65-3-13 | 30.00. |

E. Upon a second conviction for failure to stop at a port of entry or inspection station pursuant to Section 65-5-1 NMSA 1978, the penalty assessment shall be two hundred fifty dollars ($250). Upon a third or subsequent conviction, the penalty assessment shall be five hundred dollars ($500).

**History:** 1978 Comp., § 66-8-116.2, enacted by Laws 1989, ch. 319, § 13; 1991, ch. 160, § 21; 1995, ch. 135, § 25; 2003, ch. 359, § 43; 2006, ch. 71, § 2; 2007, ch. 209, § 14; 2008, ch. 31, § 1.

## ANNOTATIONS

**Cross references.** — For the Motor Carrier Act, *see* 65-2A-1 NMSA 1978 et seq.

**The 2008 amendment,** effective May 14, 2008, in Subsection A, imposed a penalty assessment for failure to comply with Weight Distance Tax Act requirements.

**The 2007 amendment,** effective July 1, 2007, increased the penalty assessments; added penalty assessments for violation of Sections 66-3-1.1, 65-2A-16, 65-3-8, 65-3-8 and 65-3-11 NMSA 1978; and added Subsection E.

**Compiler's note.** — On September 26, 2007, the New Mexico compilation commission received a letter from the New Mexico Public Regulation Commission dated September 24, 2007, notifying the New Mexico compilation commission that the federal government had taken all action necessary to implement the Unified Carrier Regulation Act of 2005 on August 24, 2007, the date of publication of regulations in the Federal Register.

**The 2006 amendment,** effective January 1, 2007, in Subsection A, changed "65-1-12" to "66-3-1.1" as the section violated for failure to register motor carrier; and added a $50.00 penalty assessment for failure to register with a base state under the federal Unified Carrier Registration Act of 2005.

Laws 2006, ch. 71 became effective January 1, 2007, as the New Mexico compilation commission was not notified of a delay as provided by Laws 2007, ch. 71, § 3.

**The 2003 amendment,** effective July 1, 2003, updated internal references in light of the Motor Carrier Act; substituted "carry single state registration receipt issued by a base

state" for "register interstate motor carrier with state corporation commission" in Subsection A.

**The 1995 amendment,** effective June 16, 1995, designated the existing provisions as Subsection A and added Subsections B through D.

**The 1991 amendment,** effective July 1, 1991, deleted a penalty assessment of $75.00 for violation of Section 65-1-9, failure to pay motor carrier fees.

## *66-8-116.2. Penalty assessment misdemeanors; Motor Carrier Act. (Effective July 1, 2024.)*

*As used in the Motor Vehicle Code and the Motor Carrier Act [65-2A-1 to 65-2A-41 NMSA 1978], "penalty assessment misdemeanor" means, in addition to the definitions of that term in Sections 66-8-116 and 66-8-116.1 NMSA 1978, violation of the following listed sections of the NMSA 1978 for which, except as provided in Subsection E of this section, the listed penalty is established:*

*A. GENERAL*

| *COMMON NAME OF OFFENSE* | *SECTION VIOLATED* | *PENALTY ASSESSMENT* |
|---|---|---|
| *Failure to register motor carrier* | *66-3-1.1* | *$300.00* |
| *Failure to carry tax identification permit* | *65-1-26* | *300.00* |
| *Failure of motor carrier to comply with weight distance requirements of the Weight Distance Tax Act* | *65-1-26* | |
| *(1) first conviction* | | *300.00* |
| *(2) second conviction, within ten years of the first conviction* | | *500.00* |
| *3) third or subsequent conviction, within ten years of the first conviction* | | *1,000.00* |
| *Failure to comply with department of transportation rules* | *65-2A-7* | *50.00* |
| *Failure to carry single state registration receipt issued by a base state* | *65-2A-7* | *50.00* |
| *Failure to register with a base state under the federal Unified Carrier Registration Act of 2005* | *65-2A-16* | *50.00* |

| | | |
|---|---|---|
| *Failure to stop at designated registration place* | *65-5-1* | *100.00* |
| *Failure to obtain proper clearance certificates* | *65-5-3* | *100.00.* |

*B. VEHICLE OUT-OF-SERVICE VIOLATIONS*

| *COMMON NAME OF OFFENSE* | *SECTION VIOLATED* | *PENALTY ASSESSMENT* |
|---|---|---|
| *Absence of braking action* | *65-3-9* | *$100.00* |
| *Damaged brake lining or pads* | *65-3-9* | *50.00* |
| *Loose or missing brake components* | *65-3-12* | *100.00* |
| *Inoperable breakaway braking system* | *65-3-12* | *50.00* |
| *Defective or damaged brake tubing* | *65-3-12* | *50.00* |
| *Inoperative low pressure warning device* | *65-3-9* | *50.00* |
| *Reservoir pressure not maintained* | *65-3-12* | *100.00* |
| *Inoperative tractor protection valve* | *65-3-9* | *100.00* |
| *Damaged or loose air compressor* | *65-3-12* | *100.00* |
| *Audible air leak at brake chamber* | *65-3-12* | *50.00* |
| *Defective safety devices--chains or hooks* | *65-3-9* | *100.00* |
| *Defective towing or coupling devices* | *65-3-9* | *100.00* |
| *Defective exhaust systems* | *65-3-9* | *30.00* |
| *Frame defects--trailers* | *65-3-12* | *100.00* |
| *Frame defects--other* | *65-3-9* | *100.00* |
| *Defective fuel systems* | *65-3-9* | *50.00* |
| *Missing or inoperative lamps* | *65-3-9* | *25.00* |
| *Missing lamps on projecting loads* | *65-3-9* | *50.00* |
| *Missing or inoperative turn signal* | *65-3-9* | *25.00* |
| *Unsafe loading* | *65-3-8* | *100.00* |
| *Possession of radar detector in commercial motor carrier vehicle* | *65-3-8* | *100.00* |
| *Possession of alcoholic beverage in commercial* | | |

| | | |
|---|---|---|
| *motor carrier vehicle* | *65-3-8* | *200.00* |
| *Excessive steering wheel play* | *65-3-9* | *100.00* |
| *Steering column defects* | *65-3-9* | *100.00* |
| *Steering box or steering system defects* | *65-3-9* | *100.00* |
| *Suspension system defects* | *65-3-9* | *50.00* |
| *Defective springs or spring assembly* | *65-3-9* | *50.00* |
| *Defective tires--steering axle* | *65-3-9* | *100.00* |
| *Defective tires--other axles* | *65-3-9* | *30.00* |
| *Defective wheels and rims* | *65-3-9* | *50.00* |
| *Defective or missing windshield wipers* | *65-3-9* | *30.00* |
| *Defective or inoperative emergency exit--bus* | *65-3-9* | *100.00.* |

*C. DRIVER OUT-OF-SERVICE VIOLATIONS*

| *COMMON NAME OF OFFENSE* | *SECTION VIOLATED* | *PENALTY ASSESSMENT* |
|---|---|---|
| *Driver's age* | *65-3-7* | *$30.00* |
| *Driver not licensed for type of vehicle being operated* | *65-3-7* | *30.00* |
| *Failure to have valid commercial driver's license in possession* | *66-5-59* | *30.00* |
| *No waiver of physical disqualification in possession* | *65-3-7* | *30.00* |
| *Sickness or fatigue* | *65-3-8* | *100.00* |
| *Driver disqualification* | *65-3-7* | *500.00* |
| *Exceeding the 10-hour driving rule for passenger carrier transportation* | *65-3-11* | *100.00* |
| *Exceeding the 11-hour driving rule for property carrier transportation* | *65-3-11* | *100.00* |
| *Exceeding the 14-hour on duty rule for property carrier transportation* | *65-3-11* | *100.00* |
| *Exceeding the 15-hour on duty rule for passenger carrier transportation* | *65-3-11* | *100.00* |
| *Exceeding the 60 hours in 7 days on duty rule* | *65-3-11* | *100.00* |

| | | |
|---|---|---|
| *Exceeding the 70 hours in 8 days on duty rule* | *65-3-11* | *100.00* |
| *False log book* | *65-3-11* | *100.00* |
| *No log book* | *65-3-11* | *100.00* |
| *No record for previous 7 days* | *65-3-11* | *100.00.* |

*D. HAZARDOUS MATERIALS OUT-OF-SERVICE VIOLATIONS*

| *COMMON NAME OF OFFENSE* | *SECTION VIOLATED* | *PENALTY ASSESSMENT* |
|---|---|---|
| *Placarding violations* | *65-3-13* | *$250.00* |
| *Cargo tank not meeting specifications* | *65-3-13* | *250.00* |
| *Internal valve operation violations* | *65-3-13* | *250.00* |
| *Hazardous materials packaging violations* | *65-3-13* | *250.00* |
| *Insecure load--hazardous materials* | *65-3-13* | *250.00* |
| *Shipping papers violations* | *65-3-13* | *30.00* |
| *Shipment of forbidden combination of hazardous materials* | *65-3-13* | *250.00* |
| *No hazardous waste manifest* | *65-3-13* | *30.00* |
| *Bulk packaging marking violations* | *65-3-13* | *30.00* |
| *Cargo tank marking violations* | *65-3-13* | *30.00.* |

*E. Upon a second conviction for failure to stop at a port of entry or inspection station pursuant to Section 65-5-1 NMSA 1978, the penalty assessment shall be two hundred fifty dollars ($250). Upon a third or subsequent conviction, the penalty assessment shall be five hundred dollars ($500).*

***History:*** *1978 Comp., § 66-8-116.2, enacted by Laws 1989, ch. 319, § 13; 1991, ch. 160, § 21; 1995, ch. 135, § 25; 2003, ch. 359, § 43; 2006, ch. 71, § 2; 2007, ch. 209, § 14; 2008, ch. 31, § 1; 2023, ch. 100, § 79.*

***ANNOTATIONS***

***The 2023 amendment,*** *effective July 1, 2024, removed a reference to the public regulation commission due to the transfer of certain powers and duties to the department of transportation; and after "Failure to comply with", changed "public regulation commission" to "department of transportation".*

## 66-8-116.3. Penalty assessment misdemeanors; additional fees. (Repealed effective July 1, 2024.)

In addition to the penalty assessment established for each penalty assessment misdemeanor, there shall be assessed:

A. in a county without a metropolitan court, twenty dollars ($20.00) to help defray the costs of local government corrections;

B. a court automation fee of ten dollars ($10.00);

C. a traffic safety fee of three dollars ($3.00), which shall be credited to the traffic safety education and enforcement fund;

D. a judicial education fee of three dollars ($3.00), which shall be credited to the judicial education fund;

E. a jury and witness fee of five dollars ($5.00), which shall be credited to the jury and witness fee fund;

F. a juvenile adjudication fee of one dollar ($1.00), which shall be credited to the juvenile adjudication fund;

G. a brain injury services fee of five dollars ($5.00), which shall be credited to the brain injury services fund;

H. a court facilities fee as follows:

in a county with a metropolitan court $24.00;

in any other county 10.00; and

I. until May 31, 2014, a magistrate courts operations fee of four dollars ($4.00), which shall be credited to the magistrate courts operations fund.

**History:** 1978 Comp., § 66-8-116.3, enacted by Laws 1989, ch. 318, § 35, Laws 1989, ch. 319, § 14 and Laws 1989, ch. 320, § 5; 1990, ch. 57, § 2; 1993, ch. 273, § 6; 1996, ch. 41, § 8; 1997, ch. 242, § 5; 1997, ch. 247, § 2; 1998 (1st S.S.), ch. 6, § 4; 2000, ch. 5, § 7; 2003, ch. 424, § 4; 2009, ch. 244, § 1; 2009, ch. 245, § 5; 2010, ch. 7, § 2; 2011, ch. 173, § 3.

## ANNOTATIONS

**Delayed repeals.** — Laws 2023, ch. 184, § 19 repealed 66-8-116.3 NMSA 1978, effective July 1, 2024.

**Cross references.** — For payment in foreign currency under the Motor Vehicle Code, *see* 66-6-36 NMSA 1978.

For traffic safety education and enforcement fund, *see* 66-7-512 NMSA 1978.

For brain injury services fund, *see* 24-1-24 NMSA 1978.

For the court automated fund, *see* 34-9-10 NMSA 1978.

**The 2011 amendment,** effective July 1, 2011, in Subsection A, inserted a comma after "court".

**The 2010 amendment,** effective May 19, 2010, added Subsection I.

**2009 amendments.** — Laws 2009, ch. 244, § 1 and Laws 2009, ch. 245, § 5 both amended 66-8-116.3 NMSA 1978. The section is set out as amended by Laws 2009, ch. 245, § 5. *See* 12-1-8 NMSA 1978.

**Laws 2009, ch. 245, § 5,** effective July 1, 2009, in Subsection D, changed the fee from $2.00 to $3.00 and added a new Subsection E that provided for a jury and witness fee of $5.00 to be credited to the jury and witness fee fund.

**Laws 2009, ch. 244, § 1,** effective June 19, 2009, also amended the section as follows: in Subsection D, changed $2.00 to $3.00; and added a new Subsection E that provided for a juvenile adjudication fee of $1.00 to be credited to the juvenile adjudication fund.

**The 2003 amendment,** effective July 1, 2003, in Subsection A, increased the assessment from ten to twenty dollars; in Subsection D, increased the fee from one dollar to two dollars.

**The 2000 amendment,** effective February 15, 2000, in Subsection A, inserted "in a county without a metropolitan court" and, in Subsection F, substituted "24.00" for "14.00".

**The 1998 amendment,** effective July 1, 1998, added Subsection F and made minor related stylistic changes.

**The 1997 amendment,** effective July 1, 1997, added Subsection E.

**The 1996 amendment,** effective May 15, 1996, substituted "ten dollars (10.00)" for "three dollars ($3.00)" in Subsection B.

**The 1993 amendment,** effective July 1, 1993, substituted "fees" for "fee" in the section heading; deleted "a penalty assessment fee of" from the end of the introductory language; and added Subsection D, making related grammatical changes.

**The 1990 amendment,** effective July 1, 1990, added Subsection C and made a minor stylistic change.

## 66-8-117. Penalty assessment misdemeanors; option; effect.

A. Unless a warning notice is given, at the time of making an arrest for any penalty assessment misdemeanor the arresting officer shall offer the alleged violator the option of accepting a penalty assessment. The violator's signature on the penalty assessment notice constitutes an acknowledgment of guilt of the offense stated in the notice.

B. Except for penalty assessments made under a municipal program authorized by Section 66-8-130 NMSA 1978, payment of any penalty assessment must be made by mail to the division within thirty days from the date of arrest. Payments of penalty assessments are timely if postmarked within thirty days from the date of arrest. The division may issue a receipt when a penalty assessment is paid by currency, but checks tendered by the violator upon which payment is received are sufficient receipt.

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

**History:** 1953 Comp., § 64-8-117, enacted by Laws 1978, ch. 35, § 525; 1981, ch. 360, § 9; 1990, ch. 120, § 38.

**ANNOTATIONS**

**The 1990 amendment,** effective July 1, 1990, in Subsection B, rewrote the first sentence which read "Payment of any penalty assessment must be made by mail to the motor vehicle division, Santa Fe, within thirty days from the date of arrest" and deleted "motor vehicle" preceding "division" in the third sentence.

**Choice of persons arrested.** — New Mexico law provides that, with certain exceptions, for more serious offenses, persons arrested for motor vehicle violations who are not given warning notices are to be given the choice of appearing in court upon their promise to appear, as evidenced by signing the notice to appear section of a uniform traffic citation, or paying the penalty assessment, as evidenced by signing an agreement to pay the assessment on the uniform traffic citation. *Vigil v. N.M. Motor Vehicle Div.*, 2005-NMCA-057, 137 N.M. 438, 112 P.3d 299.

**Advice of police officers.** — Police officers are not required to advise drivers arrested for motor vehicle violations of all the possibilities that could happen if one went to court. *Vigil v. N.M. Motor Vehicle Div.*, 2005-NMCA-057, 137 N.M. 438, 112 P.3d 299.

**Motorist enters into legal obligation with state upon acceptance.** — When a motorist charged with the violation of one of the enumerated traffic regulations accepts penalty assessment, he enters into a legal obligation with the state, which is bound by unambiguous terms concerning time, place and form of discharge. 1969 Op. Att'y Gen. No. 69-88.

**Motorist cannot reconsider his acceptance of penalty assessment.** 1969 Op. Att'y Gen. No. 69-88.

**No official court proceedings are begun** by allowing a motorist to accept a penalty assessment. 1972 Op. Att'y Gen. No. 72-12.

## 66-8-118. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1981, ch. 360, § 21, repealed 66-8-118 NMSA 1978, as enacted by Laws 1978, ch. 35, § 526, relating to failure to pay penalty assessment, effective January 1, 1982. For present provisions, *see* 66-5-25, 66-5-26 and 66-5-30 NMSA 1978.

## 66-8-119. Penalty assessment revenue; disposition.

A. The division shall remit all penalty assessment receipts, except receipts collected pursuant to Subsections A through I of Section 66-8-116.3 NMSA 1978, to the state treasurer for credit to the general fund.

B. The division 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;

(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;

(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.

**History:** 1953 Comp., § 64-22-4.3, enacted by Laws 1968, ch. 62, § 159; recompiled as 1953 Comp., § 64-8-119, by Laws 1978, ch. 35, § 527; 1981, ch. 360, § 10; 1983, ch. 134, § 8; 1988, ch. 121, § 6; 1990, ch. 57, § 3; 1993, ch. 273, § 7; 1997, ch. 242, § 6; 1997, ch. 247, § 3; 1998 (1st S.S.), ch. 6, § 5; 2009, ch. 245, § 6; 2010, ch. 7, § 3.

## ANNOTATIONS

**Cross references.** — For definition of "division", *see* 66-1-4.4 NMSA 1978.

For traffic safety education and enforcement fund, *see* 66-7-512 NMSA 1978.

For general fund, *see* 6-4-2 NMSA 1978.

For brain injury services fund, *see* 24-1-24 NMSA 1978.

For local governments correction fund, *see* 33-3-25 NMSA 1978.

For court automation fund, *see* 34-9-10 NMSA 1978.

For court automation fee, *see* 35-6-1 NMSA 1978, 66-8-116.3 NMSA 1978 and 66-8-119 NMSA 1978.

**The 2010 amendment,** effective May 19, 2010, added Paragraphs (6) and (9) of Subsection B, and renumbered paragraphs accordingly.

**The 2009 amendment,** effective July 1, 2009, in Paragraph (5) of Subsection B, after "Section 66-8-116.3 NMSA 1978", added "to the state treasurer for credit to the jury and witness fee fund"; and added Paragraph (6) of Subsection B.

**The 1998 amendment,** effective July 1, 1998, substituted "F" for "E" in Subsection A, and added Paragraph B(6), making minor related stylistic changes.

**The 1997 amendments.** — Identical amendments to this section, enacted by Laws 1997, ch. 242, § 6 and Laws 1997, ch. 247, § 3, effective July 1, 1997, added the subsection designations, deleted the language "the court automation fee collected pursuant to", "the traffic safety fee collected pursuant to" and "and the judicial education fee collected pursuant to" at the end of Paragraphs B(1), (2) and (3), respectively, and added Paragraph B(5).

**The 1993 amendment,** effective July 1, 1993, substituted "A through D" for "A, B and C" and deleted "state" before "general fund" in the first sentence; and deleted "and" before "the traffic safety fee" and added the language beginning "and the judicial education fee" to the end, in the second sentence.

**The 1990 amendment,** effective July 1, 1990, substituted "Subsections A, B and C of Section 66-8-116.3 NMSA 1978" for "Subsections D and E of Section 66-8-116 NMSA 1978" in the first sentence and rewrote the second sentence which read "The division shall remit all penalty assessment fee receipts collected pursuant to Subsection D of Section 66-8-116 NMSA 1978 to the state treasurer for credit to the local government corrections fund and the court automation fee collected pursuant to Subsection E of Section 66-8-116 NMSA 1978 to the state treasurer for credit to the court automation fund".

**The 1988 amendment,** effective March 8, 1988, substituted "Subsections D and E" for "Subsection D" in the first sentence, and added all of the language of the second sentence following the first instance of "corrections fund".

## *66-8-119. Penalty assessment revenue; disposition. (Effective July 1, 2024.)*

*A. The division shall remit all penalty assessment receipts to the state treasurer for credit to the general fund.*

*B. The division shall remit all penalty assessment fee receipts assessed prior to July 1, 2024 and collected on or after July 1, 2024 to the state treasurer for credit to the general fund.*

***History:*** *1953 Comp., § 64-22-4.3, enacted by Laws 1968, ch. 62, § 159; recompiled as 1953 Comp., § 64-8-119, by Laws 1978, ch. 35, § 527; 1981, ch. 360, § 10; 1983, ch. 134, § 8; 1988, ch. 121, § 6; 1990, ch. 57, § 3; 1993, ch. 273, § 7; 1997, ch. 242, § 6; 1997, ch. 247, § 3; 1998 (1st S.S.), ch. 6, § 5; 2009, ch. 245, § 6; 2010, ch. 7, § 3; 2023, ch. 184, § 18.*

***ANNOTATIONS***

***The 2023 amendment,*** *effective July 1, 2024, removed provisions related to the remittance of certain fees that are no longer collected; in Subsection A, after "receipts", deleted "except receipts collected pursuant to Subsection A through I of Section 66-8-116.3 NMSA 1978"; in Subsection B, after "receipts", deleted "assessed prior to July 1, 2024 and", after "collected", deleted "pursuant to" and added "on or after July 1, 2024 to the state treasurer for credit to the general fund"; and deleted Paragraphs B(1) through B(9).*

## 66-8-120. Parties to a crime.

Every person who commits, attempts to commit, conspires to commit or aids or abets in the commission of any act declared herein to be a crime, whether individually or in connection with one or more other persons or as a principal, agent or accessory, shall be guilty of such offense, and every person who falsely, fraudulently, forcibly or willfully induces, causes, coerces, requires, permits or directs another to violate any

provision of the Motor Vehicle Code [66-1-1 NMSA 1978] or any other law of this state pertaining to motor vehicles is likewise guilty of such offense.

**History:** 1953 Comp., § 64-8-120, enacted by Laws 1978, ch. 35, § 528.

**ANNOTATIONS**

**Retroactive application of *State v. Marquez*.** — Where defendant suggested that defendant and the driver of the automobile go out for drinks; defendant encouraged the driver to go to several bars where defendant purchased alcohol; after defendant and the driver left a bar, the driver struck and killed a pedestrian; defendant was charged with being a party to a crime under Section 66-8-120 NMSA 1978 after the Court of Appeals issued its opinion in *State v. Marquez*, 2010-NMCA-064, 148 N.M. 511, 238 P.3d 880; and the district court dismissed the charges against defendant on the ground that *Marquez* was an unforeseeable interpretation of Section 66-8-120 NMSA 1978 that could not be applied retroactively to defendant, Section 66-8-120 NMSA 1978 clearly sets out that it is a crime for a person to aid and abet in violation of the Motor Vehicle Code and because *Marquez* neither changed the previous interpretation of Section 66-8-120 NMSA 1978 nor enlarged the scope of the conduct criminalized by Section 66-8-120 NMSA 1978, the court's interpretation of Section 66-8-120 NMSA 1978 in *Marquez* was foreseeable and applied to defendant. *State v. Lovato*, 2011-NMCA-065, 150 N.M. 19, 256 P.3d 982, cert. denied, 2011-NMCERT-005, 150 N.M. 666, 265 P.3d 717.

**The charges of party to the crime of homicide by vehicle** and great bodily harm by a vehicle do not require physical control over a vehicle. *State v. Marquez*, 2010-NMCA-064, 148 N.M. 511, 238 P.3d 880, cert. quashed, 2010-NMCERT-006, 148 N.M. 582, 241 P.3d 180.

**Party to the crime of homicide by vehicle and great bodily harm by a vehicle.** — Where defendant and defendant's friend were drinking together in a bar; the friend became so intoxicated that the bar refused service; defendant and the friend were refused service at another bar; defendant bought a twelve-pack of beer and suggested that the friend drive them in the friend's vehicle so that they could continue to party; the friend's vehicle rear-ended a van that resulted in the death of two and great bodily injury of five occupants of the van; seven open beer cans were found in the friend's vehicle; the friend had a breath alcohol content of .19; and defendant stated that defendant knew the friend was intoxicated at the time of the accident, and that defendant should have taken the friend's keys away, although defendant did not have physical control over the friend's vehicle, defendant was guilty of homicide by a vehicle and of great bodily injury by a vehicle while driving a vehicle under the influence of alcohol. *State v. Marquez*, 2010-NMCA-064, 148 N.M. 511, 238 P.3d 880, cert. quashed, 2010-NMCERT-006, 148 N.M. 582, 241 P.3d 180.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 61A C.J.S. Motor Vehicles § 590.

## 66-8-121. Offenses by persons owning or controlling vehicles.

It is unlawful for the owner, or any other person, employing or otherwise directing the driver of any vehicle to require or to permit the operation of such vehicle upon a highway in any manner contrary to law.

**History:** 1941 Comp., § 68-2603, enacted by Laws 1953, ch. 139, § 184; 1953 Comp., § 64-22-6; recompiled as 1953 Comp., § 64-8-121, by Laws 1978, ch. 35, § 529.

**ANNOTATIONS**

**Cross references.** — For permitting unauthorized persons to drive, *see* 66-5-40, 66-5-41 NMSA 1978.

## 66-8-122. Immediate appearance before magistrate.

Whenever any person is arrested for any violation of the Motor Vehicle Code [66-1-1 NMSA 1978] or other law relating to motor vehicles punishable as a misdemeanor, he shall be immediately taken before an available magistrate who has jurisdiction of the offense when the:

A. person requests immediate appearance;

B. person is charged with driving while under the influence of intoxicating liquor or narcotic drugs;

C. person is charged with failure to stop in the event of an accident causing death, personal injuries or damage to property;

D. person is charged with reckless driving;

E. arresting officer has good cause to believe the person arrested has committed a felony;

F. person refuses to give his written promise to appear in court or acknowledge receipt of a warning notice; or

G. person is charged with driving when his privilege to do so was suspended or revoked pursuant to Section 66-8-111 NMSA 1978 or pursuant to a conviction for driving while under the influence of intoxicating liquor or drugs.

**History:** 1941 Comp., § 68-2604, enacted by Laws 1953, ch. 139, § 185; 1953 Comp., § 64-22-7; Laws 1968, ch. 62, § 160; 1977, ch. 376, § 2; recompiled as 1953 Comp., § 64-8-122, by Laws 1978, ch. 35, § 530; 1978, ch. 162, § 1; 1978, ch. 212, § 1; 1985, ch. 186, § 3.

**ANNOTATIONS**

**Cross references.** — For the definition of "nonresident", *see* 66-1-4.12 NMSA 1978.

For failure to stop for an accident, *see* 66-7-201 to 66-7-205 NMSA 1978.

For driving while under the influence of intoxicating liquor or narcotic drugs, *see* 66-8-102 NMSA 1978.

For reckless driving, *see* 66-8-113 NMSA 1978.

**No right to counsel when under custodial arrest following testing.** — A person issued a citation and placed under custodial arrest for driving while under the influence of intoxicating liquor does not have a constitutional right to counsel immediately following a breath alcohol test since it did not amount to initiation of judicial criminal proceedings or prosecutorial commitment, nor was the period following administration of the test a critical stage. *State v. Sandoval*, 1984-NMCA-053, 101 N.M. 399, 683 P.2d 516.

**Word "immediate" does not mean "instantaneously",** without any delay or any time intervening, but means within a reasonable time, without unreasonable or unnecessary delay, having due regard to the nature and circumstances of a particular case. 1960 Op. Att'y Gen. No. 60-34.

**Peace officers can make warrantless arrest when probable cause offense committed in presence.** — Peace officers in New Mexico can make arrests without warrants for other than trivial misdemeanors when they have probable cause to believe an offense is being committed in their presence. Such probable cause exists when there is a reasonable foundation for the judgment of the officer that a misdemeanor is being committed. 1961 Op. Att'y Gen. No. 61-117.

**Warrantless arrest for commission of crime.** — In situations involving violations of the Motor Vehicle Code Sections (66-1-1 to 66-8-140 NMSA 1978) other than those enumerated in this section, a police officer may make a physical arrest without a warrant rather than issuing a uniform traffic citation so long as the arrest is made for the commission of a felony or for the commission of a misdemeanor committed in his presence. 1961 Op. Att'y Gen. No. 61-117.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Right of motorist stopped by police officers to be informed at that time of his federal constitutional rights under Miranda v. Arizona, 25 A.L.R.3d 1076.

61A C.J.S. Motor Vehicles § 593(1).

## 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 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 assessment. If the arrested person declines to accept a penalty assessment notice, the officer shall issue a notice to appear.

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.

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. Any officer violating this section is guilty of a misconduct in office and is subject to removal.

F. A law enforcement officer who arrests a person without a warrant for a misdemeanor violation of the Motor Carrier Act [65-2A-1 to 65-2A-40 NMSA 1978], the Criminal Code [Chapter 30, Article 1 NMSA 1978], the Liquor Control Act [Chapter 60, Articles 3A, 5A, 6A, 6B, 6C, 6E, 7A, 7B and 8A NMSA 1978] 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 of Section 31-1-6 NMSA 1978, in lieu of taking the person to jail.

G. 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 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.

**History:** 1953 Comp., § 64-8-123, enacted by Laws 1978, ch. 35, § 531; 1981, ch. 360, § 11; 1989, ch. 320, § 6; 2013, ch. 197, § 2.

## ANNOTATIONS

**Cross references.** — For penalty assessments, *see* 66-8-116 to 66-8-119 NMSA 1978.

**The 2013 amendment,** effective July 1, 2013, provided for the use of electronic citations; in Subsection A, after "uniform traffic citation", added "in paper or electronic form"; in Subsection B, in the first sentence, after "uniform traffic citation", added "in paper or electronic form"; in Subsection C, in the first sentence, after "uniform traffic citation", added "in paper or electronic form"; in Subsection F, after "uniform traffic citation", added "in paper or electronic form", after "procedures outlined in", added "Subsections B through F" and after "Section 31-1-6 NMSA 1978", deleted "Subsections B through E"; and added Subsection G.

**Temporary provisions.** — Laws 2013, ch. 197, § 5 provided that the department of public safety and the motor vehicle division of the taxation and revenue department shall develop procedures to carry out the provisions of Laws 2013, ch. 197, §§ 1 to 4.

**The 1989 amendment,** effective July 1, 1989, added Subsection F.

**Investigative detention by police officer.** — Despite this section's use of the words "arrest" and "custody," when a New Mexico police officer stops a car merely to issue a traffic summons for a minor speeding infraction, that stop is more in the nature of an investigative detention than a traditional arrest. *United States v. Gonzalez*, 763 F.2d 1127 (10th Cir. 1985).

**Choice of persons arrested.** — New Mexico law provides that, with certain exceptions, for more serious offenses, persons arrested for motor vehicle violations who are not given warning notices are to be given the choice of appearing in court upon their promise to appear, as evidenced by signing the notice to appear section of a uniform traffic citation, or paying the penalty assessment, as evidenced by signing an agreement to pay the assessment on the uniform traffic citation. *Vigil v. N.M. Motor Vehicle Div.*, 2005-NMCA-057, 137 N.M. 438, 112 P.3d 299.

**Advice of police officers.** — Police officers are not required to advise drivers arrested for motor vehicle violations of all the possibilities that could happen if one went to court. *Vigil v. N.M. Motor Vehicle Div.*, 2005-NMCA-057, 137 N.M. 438, 112 P.3d 299.

**Applicability of forgery statute.** — The forgery statute, 30-16-10A NMSA 1978, includes uniform traffic citations among the types of writings which may purport to have legal efficacy. Therefore, motorist who gave officer brother's name and signed brother's

name to three traffic citations could be prosecuted for forgery. *State v. Wasson*, 1998-NMCA-087, 125 N.M. 656, 964 P.2d 820, cert. denied, 125 N.M. 322, 961 P.2d 167.

**Arresting officer designates court and offender submits to its jurisdiction.** — Whenever the procedure outlined is followed, the arresting officer has the authority to designate the court before whom the offender shall appear. When the arrested person, in order to secure his immediate release, gives his written promise to appear before the court designated in the citation, he voluntarily submits to the jurisdiction of the court, which is retained by the said court to the exclusion of all others until voluntarily and legally relinquished, or until disqualified. 1958 Op. Att'y Gen. No. 58-122.

**Court within county where offense occurred.** — The arresting officer may designate which court the arrested person must appear in, so long as the court is within the county where the offense charged is alleged to have occurred, and the person cited is bound by the arresting officer's designation. 1960 Op. Att'y Gen. No. 60-199.

**Magistrate designated on citation thereby acquires and retains jurisdiction.** — The magistrate designated thereon acquires jurisdiction over the subject matter of the cause. It is fundamental that the court first acquiring jurisdiction of a cause retains it to the exclusion of all others, so long as it does not voluntarily and legally abandon it. 1958 Op. Att'y Gen. No. 58-122.

**Municipal policeman cannot require offender's appearance in court outside city.** — A city or town policeman, when issuing a traffic citation to an adult for the violation of a municipal ordinance, cannot require the offender to appear before a magistrate court located in a precinct outside the limits of the municipality. Of course, if the governing body of the municipality has designated one particular court within the municipality to hear all cases of violations of municipal ordinances, then all traffic citations should be directed to that court. 1960 Op. Att'y Gen. No. 60-199.

**No appearance unless violation is of state traffic law.** — A city or town policeman could issue a traffic citation to an adult for an alleged violation of a state traffic law, and require the person arrested to appear in a court located in a precinct outside the municipality, so long as the court designated is within the county. 1960 Op. Att'y Gen. No. 60-199.

**Officer may detain accused when no court open.** — When a police officer arrests a person for driving while under the influence of alcohol and because of the hour of the night is unable to find a court open, the police officer may detain the accused under arrest until it is possible to take him before a magistrate. 1960 Op. Att'y Gen. No. 60-34.

## 66-8-124. Arresting officer to be in uniform.

A. No person shall be arrested for violating the Motor Vehicle Code [66-1-1 NMSA 1978] or other law relating to motor vehicles punishable as a misdemeanor except by a

commissioned, salaried peace officer who, at the time of arrest, is wearing a uniform clearly indicating the peace officer's official status.

B. Notwithstanding the provisions of Subsection A of this section, a municipality may provide by ordinance that uniformed private security guards may be commissioned by the local police agency to issue parking citations for violations of clearly and properly marked fire zones and access zones for persons with significant mobility limitation. Prior to the commissioning of any security guard, the employer of the security guard shall agree in writing with the local police agency to the commissioning of the employer's security guard. The employer of any security guard commissioned under the provisions of this section shall be liable for the actions of that security guard in carrying out the security guard's duties pursuant to that commission. Notwithstanding the provisions of the Tort Claims Act [41-4-1 to 41-4-27 NMSA 1978], private security guards commissioned under this section shall not be deemed public employees under that act.

**History:** 1953 Comp., § 64-22-8.1, enacted by Laws 1961, ch. 213, § 3; 1968, ch. 62, § 162; recompiled as 1953 Comp., § 64-8-124, by Laws 1978, ch. 35, § 532; 1989, ch. 127, § 1; 2007, ch. 319, § 64.

## ANNOTATIONS

**The 2007 amendment,** effective June 15, 2007, changed "handicapped access zones" to "access zones for persons with significant mobility limitation".

**The 1989 amendment,** effective June 16, 1989, designated the formerly undesignated provisions as Subsection A, while substituting "commissioned" for "full-time" therein, and added Subsection B.

**Only commissioned officers may arrest a person who is suspected of violating the Motor Vehicle Code**. *State v. Slayton*, 2009-NMSC-054, 147 N.M. 340, 223 P.3d 337.

**The common law right to citizen's arrests for suspected violations the Motor Vehicle Code has been abrogated by the legislature.** *State v. Slayton*, 2009-NMSC-054, 147 N.M. 340, 223 P.3d 337.

**Arrest under Section 66-8-124 NMSA 1978 includes temporary detentions.** *State v. Slayton*, 2009-NMSC-054, 147 N.M. 340, 223 P.3d 337.

**Arrest by a police service aide.** — Where defendant was detained and handcuffed by a police service aide pending the arrival of police officers to investigate defendant's involvement in a rear-end accident; the police service aide was employed by the police department as a non-commissioned officer; and defendant was charged with second offense aggravated DWI contrary to Section 66-8-102 NMSA 1978, the police service aide was without statutory authority to arrest defendant. *State v. Slayton*, 2009-NMSC-054, 147 N.M. 340, 223 P.3d 337.

**Defendant's arrest by a noncommissioned, volunteer reserve deputy sheriff was unconstitutional.** — Where defendant was detained by a noncommissioned, volunteer reserve deputy sheriff in violation of § 66-8-124 NMSA 1978, after the reserve deputy observed defendant weaving repeatedly in a roadway, the reserve deputy's actions violated defendant's constitutional right to be free from unreasonable seizures, because the reserve deputy's actions in temporarily detaining defendant amounted to an arrest, the reserve deputy was not a commissioned, salaried peace officer as required by § 66-8-124, and therefore acted without statutory authority, and in balancing the degree to which the arrest intruded upon defendant's privacy with the degree to which the arrest was needed to promote legitimate governmental interests, defendant's privacy interests outweigh the state's interest because the unauthorized arrest, in this case, did not promote the state's interests in deterring drunk driving or in maintaining highway safety. *State v. Wright*, 2022-NMSC-009, *rev'g* 2019-NMCA-026, 458 P.3d 604.

**Determining if officer is in uniform.** — Two alternative tests are adopted for determining if an officer is in "uniform" within the intent of the statute: (1) whether there are sufficient indicia that would permit a reasonable person to believe the person purporting to be a peace officer is, in fact, who he claims to be; or (2) whether the person stopped and cited either personally knows the officer or has information that should cause him to believe the person making the stop is an officer with official status. Since the officer was using a marked police unit and was wearing a windbreaker with "Albuquerque Police" clearly marked in two places, this sufficed to support a finding that he was wearing a uniform clearly indicating his official status. *State v. Archuleta*, 1994-NMCA-072, 118 N.M. 160, 879 P.2d 792.

**BDUs are "uniforms".** — A BDU comprised of black pants; black boots; a black vest to which is attached an electronic communication device with a chord; a black long-sleeve shirt with the words "STATE POLICE" in large, bold, yellow lettering on the sleeves; the word "POLICE" in large, bold, white lettering on the right shoulder; a smaller triangular cloth patch with the words "STATE POLICE" on the right shoulder; and the word "POLICE" in large, bold, white lettering in two places on the back of the shirt; an equipment belt, holster, and firearm; and a metal police badge hung from a front pocket, is a "uniform" within the meaning of Subsection A of Section 66-8-124 NMSA 1978. *State v. Maes*, 2011-NMCA-064, 149 N.M. 736, 255 P.3d 314, cert. denied, 2011-NMCERT-005, 150 N.M. 666, 265 P.3d 717.

**Provision not applicable to arrests for violations of liquor laws.** — This section does not prevent officers from carrying out their duty to investigate possible criminal behavior even if the officers are not in uniform. The provision may prevent an arrest if the arrest is to be for violations covered by the provision and the officer is not in uniform. In those circumstances the plain-clothes officer would have to wait for the arrival of the uniformed officer. However, the section was not applicable to the investigation of vehicle carried out by plain-clothes officers where arrests were for violations of liquor and narcotics laws. *State v. Ray*, 1977-NMCA-100, 91 N.M. 67, 570 P.2d 605, cert. denied, 91 N.M. 4, 569 P.2d 414.

**Meaning of "Uniform".** — "Uniform" for purposes of this section means commission of office and a prominently displayed badge. 1966 Op. Att'y Gen. No. 66-92.

## 66-8-125. Arrest without warrant.

A. Members of the New Mexico state police, sheriffs and their salaried deputies and members of any municipal police force, may arrest without warrant any person:

(1) present at the scene of a motor vehicle accident;

(2) on a highway when charged with theft of a motor vehicle; or

(3) charged with crime in another jurisdiction, upon receipt of a message giving the name or a reasonably accurate description of the person wanted, the crime alleged and a statement he is likely to flee the jurisdiction of the state.

B. To arrest without warrant, the arresting officer must have reasonable grounds, based on personal investigation which may include information from eyewitnesses, to believe the person arrested has committed a crime.

C. Members of the New Mexico state police, sheriffs, and their salaried deputies and members of any municipal police force may not make arrest for traffic violations if not in uniform; however, nothing in this section shall be construed to prohibit the arrest, without warrant, by a peace officer of any person when probable cause exists to believe that a felony crime has been committed or in nontraffic cases.

**History:** 1953 Comp., § 64-8-125, enacted by Laws 1978, ch. 35, § 533.

**ANNOTATIONS**

**BDUs are "uniforms".** — A BDU comprised of black pants; black boots; a black vest to which is attached an electronic communication device with a chord; a black long-sleeve shirt with the words "STATE POLICE" in large, bold, yellow lettering on the sleeves; the word "POLICE" in large, bold, white lettering on the right shoulder; a smaller triangular cloth patch with the words "STATE POLICE" on the right shoulder; and the word "POLICE" in large, bold, white lettering in two places on the back of the shirt; an equipment belt, holster, and firearm; and a metal police badge hung from a front pocket, is a "uniform" within the meaning of Subsection C of Section 66-8-125 NMSA 1978. *State v. Maes*, 2011-NMCA-064, 149 N.M. 736, 255 P.3d 314, cert. denied, 2011-NMCERT-005, 150 N.M. 666, 265 P.3d 717.

**Promptness required.** — If the requirements of this section are met, a valid warrantless arrest may be made of a person present at the scene of the accident if the arrest is made either at the scene or at a place other than the accident scene if the arrest is made with reasonable promptness. *State v. Calanche*, 1978-NMCA-007, 91 N.M. 390, 574 P.2d 1018.

**Misdemeanor arrest rule does not apply to DWI.** — Where a shopping mall employee saw a person staggering around the mall parking lot attempting to unlock different vans; the person eventually unlocked the door to a van and drove away; the employee gave the police a description of the van and the van's license plate number; a police officer went to the van's registered owner's address and observed a van that matched the employee's description in the driveway; the van's engine was warm; the officer knocked at the front door of the residence; the officer observed defendant stagger past the doorway, strike defendant's head on the wall next to the door, and fall; defendant staggered to the door a second time, fell, and opened the door from a sitting position; defendant told the officer that defendant had been driving the van earlier; and defendant had a strong odor of alcohol in defendant's breath, slurred speech, blood-shot eyes, and was unsteady, defendant's arrest for DWI was valid. *City of Santa Fe v. Martinez*, 2010-NMSC-033, 148 N.M. 708, 242 P.3d 275.

An investigating officer need not observe the offense in order to make a warrantless arrest. Instead, the warrantless arrest of one suspected of committing DWI is valid when supported by both probable cause and exigent circumstances. *City of Santa Fe v. Martinez*, 2010-NMSC-033, 148 N.M. 708, 242 P.3d 275.

**Arrest of a defendant who fled the scene of an accident is valid.** — This section permits a police officer to arrest, without a warrant, individuals who flee the scene of an accident before the officer arrives, when the officer has developed reasonable grounds, through personal investigation, to believe the individual committed a crime. *City of Las Cruces v. Sanchez*, 2009-NMSC-026, 146 N.M. 315, 210 P.3d 212.

Where police officers received a report that a vehicle had crashed into a house; police officers arrived at the scene of the crash within ten minutes after the crash; the vehicle's driver and passengers had fled the accident scene on foot; police officers found a passenger of the vehicle in the general area of the accident; the passenger identified the defendant as the driver of the vehicle; the police officers checked the vehicle's license plate number and registration which provided the them with the defendant's name and address; police officers found the defendant at the address indicated by the registration; the defendant had visible injuries that could have been caused by an air bag which was consistent with the condition of the vehicle at the scene of the accident; and the defendant was visibly intoxicated, the arresting officer noticed the odor of alcohol in the defendant's person and breath, and the defendant failed a blood-alcohol test, the arresting officer had reasonable grounds to believe that the defendant had been present at the scene of the accident and had committed the crime of DWI and the offense did not have to be committed in the presence of an officer. *City of Las Cruces v. Sanchez*, 2009-NMSC-026, 146 N.M. 315, 210 P.3d 212.

**Authority to make warrantless arrest circumscribed by Fourth Amendment.** — Although the New Mexico Motor Vehicle Code authorizes warrantless arrests in some instances, this license is circumscribed by the Fourth Amendment. *Howard v. Dickerson*, 34 F.3d 978 (10th Cir. 1994).

**Alternate basis for arrest.** — This section provides an alternate basis for an arrest to the usual rules governing warrantless misdemeanor arrests. *State v. Eden*, 1989-NMCA-038, 108 N.M. 737, 779 P.2d 114, cert. denied, 108 N.M. 681, 777 P.2d 1325.

**State police officer may arrest any person without a warrant if,** based on personal investigation which may include information from eyewitnesses, he has reasonable grounds to believe the person arrested has committed a crime. *Stone v. United States*, 385 F.2d 713 (10th Cir. 1967), cert. denied, 391 U.S. 966, 88 S. Ct. 2038, 20 L. Ed. 2d 880 (1968).

**Uniformed officer.** — Two alternative tests are adopted for determining if an officer is in "uniform" within the intent of the statute: one, whether there are sufficient indicia that would permit a reasonable person to believe the person purporting to be a peace officer is, in fact, who he claims to be; or, two, whether the person stopped and cited either personally knows the officer or has information that should cause him to believe the person making the stop is an officer with official status. Since the officer was using a marked police unit and was wearing a windbreaker with "Albuquerque Police" clearly marked in two places, this sufficed to support a finding that he was wearing a uniform clearly indicating his official status. *State v. Archuleta*, 1994-NMCA-072, 118 N.M. 160, 879 P.2d 792.

**Tribal police officer** has the authority to stop and issue a tribal citation, and arrest a non-Indian, so long as the Indian authorities promptly deliver up the non-Indian offender, rather than try and punish him themselves. *State v. Ryder*, 1981-NMCA-017, 98 N.M. 453, 649 P.2d 756, *aff'd*, 1982-NMSC-066, 98 N.M. 316, 648 P.2d 774.

**Bureau of Indian affairs officer.** — A noncross-commissioned bureau of Indian affairs officer is empowered to stop a vehicle within the borders of an Indian reservation for a traffic law offense and, upon determining that the offender is a non-Indian, to require him to wait until a cross-commissioned BIA officer arrives. *State v. Ryder*, 1981-NMCA-017, 98 N.M. 453, 649 P.2d 756, *aff'd*, 1982-NMSC-066, 98 N.M. 316, 648 P.2d 774.

**Provision not applicable to arrests for violations of liquor laws.** — This section does not prevent officers from carrying out their duty to investigate possible criminal behavior even if the officers are not in uniform. The provision may prevent an arrest if the arrest is to be for violations covered by the provision and the officer is not in uniform. In those circumstances the plain-clothes officer would have to wait for the arrival of the uniformed officer. However, the section was not applicable to the investigation of vehicle carried out by plain-clothes officers where arrests were for violations of liquor and narcotics laws. *State v. Ray*, 1977-NMCA-100, 91 N.M. 67, 570 P.2d 605, cert. denied, 91 N.M. 4, 569 P.2d 414.

**Mistaken belief was not basis for invalidating arrest.** — Arresting officer's reasonable but mistaken belief that defendant's snowmobile was a motor vehicle was not a sufficient basis for invalidating an otherwise valid arrest of defendant for driving

the snowmobile while intoxicated. *State v. Eden*, 1989-NMCA-038, 108 N.M. 737, 779 P.2d 114, cert. denied, 108 N.M. 681, 777 P.2d 1325.

**Careless driving and leaving scene of accident.** — The minor offenses of careless driving and leaving the scene of an accident do not merit the extraordinary recourse of warrantless home arrest. *Howard v. Dickerson*, 34 F.3d 978 (10th Cir. 1994).

**"Alcohol".** — Defendant's involvement in an automobile accident, in conjunction with a strong odor of alcohol, bloodshot eyes and slurred speech constituted probable cause to arrest him for driving while intoxicated. *State v. Jones*, 1998-NMCA-076, 125 N.M. 556, 964 P.2d 117.

**Municipal police officer enforcing outside city limits.** — Absent a statutory exception, such as fresh pursuit or the issuance of credentials by the Motor Vehicle Division, a municipal police officer's authority to enforce the Motor Vehicle Code is limited to the city limits of the municipality where he is employed. 1988 Op. Att'y Gen. No. 88-77.

**Volunteer deputy cannot make arrests pursuant to provision.** — An exception to rule that a peace officer may make an arrest, without warrant and out of uniform, where he has reasonable cause to believe suspect committed a felony, is when the suspected felon is arrested on the highway and charged with theft of a motor vehicle or a crime in another jurisdiction. In such case an unsalaried, volunteer deputy has no authority to make an arrest. In order to have authority without a warrant to arrest one for the commission of any other felony occurring under the motor vehicle laws, the arresting officer must base his reasonable grounds, in part, on a personal investigation. 1966 Op. Att'y Gen. No. 66-92.

**Law reviews.** — For annual survey of New Mexico law relating to criminal procedure, see 12 N.M.L. Rev. 271 (1982).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Validity of routine roadblocks by state or local police for purpose of discovery of vehicular or driving violations, 37 A.L.R.4th 10.

Validity of police roadblocks or checkpoints for purpose of discovery of alcoholic intoxication - post-Sitz cases, 74 A.L.R.5th 319.

61A C.J.S. Motor Vehicles § 593(1).

## 66-8-126. Failure to obey notice to appear.

A. It is a penalty assessment misdemeanor for a person to violate that person's written promise 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 written promise to appear in court may be complied with by appearance of counsel.

**History:** 1953 Comp., § 64-8-126, enacted by Laws 1978, ch. 35, § 534; 2019, ch. 224, § 5.

**ANNOTATIONS**

**Cross references.** — For the penalty for a misdemeanor, *see* 66-8-7 NMSA 1978.

**The 2019 amendment,** effective October 1, 2019, reduced the penalty for failure to obey notice to appear from a misdemeanor to a penalty assessment misdemeanor; and in Subsection A, after "It is a", added "penalty assessment".

**Violation of promise is offense in addition to original offense.** — When a person to whom a uniform traffic citation has been issued violates his written promise to appear in court, he has committed a violation in addition to that for which he was originally cited. 1961 Op. Att'y Gen. No. 61-117.

## 66-8-127. Procedure not exclusive.

Sections 66-8-122 through 66-8-125 NMSA 1978 govern all police officers in making arrests without warrant for violations of the Motor Vehicle Code [66-1-1 NMSA 1978] and other laws relating to motor vehicles, but the procedure prescribed is not exclusive of any other method prescribed by law for the arrest and prosecution of a person violating these laws.

**History:** 1953 Comp., § 64-8-127, enacted by Laws 1978, ch. 35, § 535.

**ANNOTATIONS**

**The common law right to citizen's arrests for suspected violations the Motor Vehicle Code has been abrogated by the legislature.** *State v. Slayton*, 2009-NMSC-054, 147 N.M. 340, 223 P.3d 337.

**Warrantless misdemeanor arrests proper when probable cause offense being committed.** — Peace officers in this state can make arrests without warrants for other than trivial misdemeanors when they have probable cause to believe an offense is being committed in their presence. Such probable cause exists when there is a reasonable foundation for the judgment of the officer that a misdemeanor is being committed. 1961 Op. Att'y Gen. No. 61-117.

## 66-8-128. Uniform traffic citation.

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

(1) an information section, serially numbered and containing spaces for the name, 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;

(2) a notice to appear; and

(3) a penalty assessment notice with a place for the signature of the violator agreeing 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 entity that wishes to submit electronic traffic citations instead of or with paper uniform traffic 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.

**History:** 1953 Comp., § 64-8-128, enacted by Laws 1978, ch. 35, § 536; 1981, ch. 360, § 12; 1990, ch. 120, § 39; 1995, ch. 135, § 26; 2011, ch. 47, § 1; 2013, ch. 197, § 3.

## ANNOTATIONS

**Cross references.** — For penalty assessments, *see* 66-8-116 NMSA 1978.

For warning notices, *see* 66-8-123 NMSA 1978.

For electronic authentication and substitution for signature, *see* 14-3-15.2 NMSA 1978.

**The 2013 amendment,** effective July 1, 2013, provided for the use of electronic citations; in Subsection C, in the second sentence, after "uniform traffic citation", deleted "and these electronic versions" and added "which" and after "issuance of citations", added the remainder of the sentence; in Subsection D, after "wishes to submit" deleted "uniform" and added "electronic", after "traffic citations", added "instead of or with paper uniform traffic citations", and after "submitted to the department", deleted "by electronic means"; and added Subsection E.

**Temporary provisions.** — Laws 2013, ch. 197, § 5 provided that the department of public safety and the motor vehicle division of the taxation and revenue department shall develop procedures to carry out the provisions of Laws 2013, ch. 197, §§ 1 to 4.

**The 2011 amendment,** effective July 2011, required that citations contain a blank for a physical address and a mailing address.

**The 1995 amendment,** effective June 16, 1995, substituted "department" for "division" throughout the section and "department" for "director" throughout the section and in Subsection C, added "and these electronic versions may be used in the issuance of citations" and made a minor stylistic change.

**The 1990 amendment,** effective July 1, 1990, deleted "face" at the end of the catchline, inserted the subsection designation "A" at the beginning of the section, redesignated former Subsections A, B and C as present Paragraphs (1), (2) and (3) of present Subsection A, rewrote the provisions of present Subsection A to the extent that a detailed comparison is impracticable, deleted former Subsection D pertaining to a warning notice, and added present Subsections B to D.

**Violation of promise is offense in addition to original offense.** — When a person to whom a uniform traffic citation has been issued violates his written promise to appear in court, he has committed a violation in addition to that for which he was originally cited. 1961 Op. Att'y Gen. No. 61-117.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 61A C.J.S. Motor Vehicles § 388.

## 66-8-129. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1990, ch. 120, § 44 repealed 66-8-129 NMSA 1978, as enacted by Laws 1978, ch. 35, § 537, relating to the form on the back of uniform traffic citations, effective July 1, 1990. For provisions of former section, *see* the 1989 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* 66-8-128 NMSA 1978.

## 66-8-130. All traffic citations to conform; municipalities may pass ordinance to establish similar program.

A. The uniform traffic citation, in paper or electronic form, shall be used by all state and local agencies enforcing laws and ordinances relating to motor vehicles. A municipality may, by passage of an ordinance, establish a municipal penalty assessment program similar to that established in Sections 66-8-116 through 66-8-117 NMSA 1978 for violations of provisions of the Motor Vehicle Code. Every municipality that has adopted an ordinance to establish a penalty assessment program shall assess on all penalty assessment misdemeanors after January 1, 1984, in addition to the penalty assessment, a penalty assessment fee of ten dollars ($10.00) to be deposited in a special fund in the municipal treasury for use by the municipality only for municipal jailer training; for the construction planning, construction, operation and maintenance of the municipal jail; for paying the costs of housing that municipality's prisoners in other detention facilities in the state; or for complying with match or contribution requirements for the receipt of federal funds relating to jails. Such a municipal program shall be limited to violations of municipal traffic ordinances.

B. If a municipality with a population less than three thousand according to the most recent federal decennial census has a balance in its special fund pursuant to Subsection A of this section that is over the amount projected to be needed for the next fiscal year for the purposes set forth in that subsection, the municipality may transfer the unneeded balance to the municipality's general fund.

C. All penalty assessments under a municipal program authorized by this section shall be processed by the municipal court, and all fines and fees collected shall be deposited in the treasury of the municipality. A copy of each penalty assessment processed shall be forwarded to the division within ten days of completion of local processing for posting to the driver's record. With the prior approval of the director, the required information may be submitted to the division by electronic means in lieu of forwarding copies of the penalty assessments.

D. Each agency shall provide itself with copies conforming exactly in size and format with the uniform traffic citation and the electronic version of the uniform traffic citation if applicable, prescribed by the director, and any alterations to the format to conform with local conditions must be approved by the director.

**History:** 1953 Comp., § 64-8-130, enacted by Laws 1978, ch. 35, § 538; 1979, ch. 322, § 1; 1983, ch. 134, § 9; 1987, ch. 251, § 4; 1990, ch. 120, § 40; 2013, ch. 192, § 2; 2013, ch. 197, § 4.

## ANNOTATIONS

**Cross references.** — For definition of "director", *see* 66-1-4.4 NMSA 1978.

For reproduction of public records on film, *see* 14-3-15 NMSA 1978.

For electronic authentication and substitution for signature, *see* 14-3-15.2 NMSA 1978.

**2013 Multiple Amendments.** — Laws 2013, ch. 192, § 2 and Laws 2013, ch. 197, § 4 enacted different amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 2013, ch. 197, § 4, as the last act signed by the governor, is set out above and incorporates both amendments. The amendments enacted by Laws 2013, ch. 192, § 2 and Laws 2013, ch. 197, § 4 are described below. To view the session laws in their entirety, *see* the 2013 session laws on *NMOneSource.com*.

The nature of the difference between the amendments is that Laws 2013, ch. 192, § 2 provided for the use of municipal court penalty assessment fees for general fund purposes and Laws 2013, ch. 197, § 4 provided for the use of electronic citations.

Laws 2013, ch. 197, § 4, effective July 1, 2013, provided for the use of electronic citations; in Subsection A, in the first sentence, after "uniform traffic citation", added "in paper or electronic form"; and in Subsection D, after "uniform traffic citation", added "and the electronic version of the uniform traffic citation if applicable".

Laws 2013, ch. 192, § 2, effective July 1, 2013, provided for the use of municipal court penalty assessment fees for general fund purposes; and added a new Subsection B and relettered the succeeding subsections.

**Temporary provisions.** — Laws 2013, ch. 197 § 5 provided that the department of public safety and the motor vehicle division of the taxation and revenue department shall develop procedures to carry out the provisions of Laws 2013, ch. 197, §§ 1 to 4.

**The 1990 amendment,** effective July 1, 1990, designated the first three sentences of the section as present Subsection A and made minor stylistic changes therein; designated the former fourth sentence as Subsection B, inserted "under a municipal program authorized by this section" therein, and added the second and third sentences in Subsection B; and designated the former fifth sentence as present Subsection C, substituted "format" for "color", and deleted "in language" following "alterations".

**The 1987 amendment,** effective June 19, 1987, in the third sentence, increased the fee from five to ten dollars, substituted "municipal jailer training, the construction planning, construction, operation and maintenance of the municipal jail" for "constructing, maintaining or operating the municipal jail or", and added all of the language following "state".

**Village marshal can issue uniform traffic citation** for a violation of a village traffic ordinance. 1961 Op. Att'y Gen. No. 61-03.

**Agency authorized to issue citations if required to acquire them.** — If a traffic enforcement agency is required to provide itself with uniform traffic citations, then that traffic enforcement agency is authorized to issue the citations. 1961 Op. Att'y Gen. No. 61-03.

## 66-8-131. Uniform traffic citation is complaint.

The uniform traffic citation used as a notice to appear is a valid complaint, though not verified.

**History:** 1953 Comp., § 64-22-11.3, enacted by Laws 1961, ch. 213, § 10; recompiled as 1953 Comp., § 64-8-131, by Laws 1978, ch. 35, § 539; 1990, ch. 120, § 41.

**ANNOTATIONS**

**Compiler's notes.** — Laws 1972, ch. 71, § 19, relating to criminal procedure, provides that the act not be construed as repealing 64-22-10 to 64-22-12, 1953 Comp., which includes this section.

**The 1990 amendment,** effective July 1, 1990, deleted "in the event the person receiving it voluntarily appears in court" at the end of the section.

**Applicability of forgery statute.** — The forgery statute, Section 30-16-10A NMSA 1978, includes uniform traffic citations among the types of writings which may purport to have legal efficacy. *State v. Wasson*, 1998-NMCA-087, 125 N.M. 656, 964 P.2d 820, cert. denied, 125 N.M. 322, 961 P.2d 167.

**Section contemplates issuance for violation of village ordinances.** — This section contemplates the issuance of uniform traffic citations for the violation of any traffic law or ordinance, including village traffic ordinances, which villages have the power to adopt. 1961 Op. Att'y Gen. No. 61-03.

## 66-8-132. Records of citations issued.

The chief administrative officer of every state and local traffic-enforcement agency shall issue, keep a record and require a receipt for each serially numbered citation issued to individual officers.

**History:** 1953 Comp., § 64-22-11.4, enacted by Laws 1961, ch. 213, § 11; recompiled as 1953 Comp., § 64-8-132, by Laws 1978, ch. 35, § 540.

**ANNOTATIONS**

**Compiler's notes.** — Laws 1972, ch. 71, § 19, relating to criminal procedure, provides that the act not be construed as repealing 64-22-10 to 64-22-12, 1953 Comp., which includes this section.

## 66-8-133. Disposition of citations.

A. Every state and local traffic-enforcement officer issuing a uniform traffic citation to an alleged violator of the Motor Vehicle Code [66-1-1 NMSA 1978] or other law or ordinance relating to motor vehicles shall dispose of the citation as indicated on the back of each copy.

B. Citations spoiled or issued in error shall be marked "void" in large letters on the face, signed by the officer, and the copies disposed of as a valid warning notice.

C. It is a misdemeanor and official misconduct for any officer or other public official or employee to dispose of a uniform traffic citation except as provided in this section.

**History:** 1953 Comp., § 64-22-12, enacted by Laws 1961, ch. 213, § 12; 1965, ch. 103, § 1; recompiled as 1953 Comp., § 64-8-133, by Laws 1978, ch. 35, § 541.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1961, ch. 213, § 12, repealed former 64-22-12, 1953 Comp., relating to disposition and records of traffic offenses, and enacted a new 64-22-12, 1953 Comp.

**Compiler's notes.** — Laws 1972, ch. 71, § 19, relating to criminal procedure, provides that the act not be construed as repealing 64-22-10 to 64-22-12, 1953 Comp., which includes this section.

**Cross references.** — For the penalty for a misdemeanor, *see* 66-8-7 NMSA 1978.

## 66-8-134. Illegal cancellation; audit of citation records.

A. Any person who cancels or solicits the cancellation of any uniform traffic citation other than as provided in the Motor Vehicle Code [66-1-1 NMSA 1978] is guilty of a misdemeanor.

B. Every record of uniform traffic citations required in the Motor Vehicle Code shall be audited monthly by the appropriate fiscal officer of the governmental agency to which the traffic-enforcement agency is responsible.

C. Each fiscal officer shall publish an annual summary of all traffic violation notices issued by the traffic-enforcement agency.

**History:** 1941 Comp., § 68-2610, enacted by Laws 1953, ch. 139, § 190.3; 1953 Comp., § 64-22-13; Laws 1961, ch. 213, § 13; recompiled as 1953 Comp., § 64-8-134, by Laws 1978, ch. 35, § 542.

**ANNOTATIONS**

**Cross references.** — For the penalty for a misdemeanor, *see* 66-8-7 NMSA 1978.

**Constitutionality.** — Subsection A of this section is not unconstitutionally vague or ambiguous. *Bustamante v. De Baca*, 1995-NMCA-036, 119 N.M. 739, 895 P.2d 261.

## 66-8-135. Record of traffic cases.

A. Every trial court judge shall keep a record of every traffic complaint, uniform traffic citation and other form of traffic charge filed in the judge's court or its traffic violations bureau and every official action and disposition of the charge by that court.

B. The court shall notify the department if a defendant fails to appear on a charge of violating the Motor Vehicle Code or other law or ordinance relating to motor vehicles.

C. Within ten days of the later of entry of a final disposition on a conviction for violation of the Motor Vehicle Code or other law or ordinance relating to motor vehicles or the final decision of any higher court that reviews the matter and from which no appeal or review is successfully taken, every trial court judge, including children's court judges, or the clerk of the court in which the entry of the final disposition occurred shall prepare and forward to the department an abstract of the record containing:

(1) the name and address of the defendant;

(2) the specific section number and common name of the provision of the NMSA 1978 or local law, ordinance or regulation under which the defendant was tried;

(3) the plea, finding of the court and disposition of the charge, including a fine or jail sentence or both;

(4) total costs assessed to the defendant;

(5) the date of the hearing;

(6) the court's name and address;

(7) whether the defendant was a first or subsequent offender; and

(8) whether the defendant was represented by counsel or waived the right to counsel and, if represented, the name and address of counsel.

D. The abstract of record prepared and forwarded under Subsection C of this section shall be certified as correct by the person required to prepare it. With the prior approval of the department, the information required by Subsection C of this section may be transmitted electronically to the department. A report need not be made of any disposition of a charge of illegal parking or standing of a vehicle except when the uniform traffic citation is used.

E. When the uniform traffic citation is used, the court shall provide the information required by Subsection C of this section in the manner prescribed by the department.

F. Every court of record shall also forward a like report to the department upon conviction of any person of any felony if a motor vehicle was used in the commission. With the prior approval of the department, the information required by this subsection

may be submitted electronically to the department. The report shall be forwarded to the department within ten days of the final decision of the court or of any higher court that reviews the matter and from which the decision of no appeal or review is successfully taken.

G. The willful failure or refusal of any judicial officer to comply with this section is misconduct in office and grounds for removal.

H. Except as set forth in Subsection I of this section for records of a person holding a commercial driver's license, the department shall keep records received on motorists licensed in this state at its main office. Records showing a record of conviction by a court of law shall be open to public inspection during business hours for three years from the date of their receipt, after which they shall be destroyed by the department, except for records of convictions under Sections 66-8-101 through 66-8-112 NMSA 1978, which may not be destroyed until fifty-five years from the date of their receipt. Any record received on a motorist licensed in another state or country shall be forwarded to the licensing authority of that state or country.

I. The department shall keep records received on a person holding a commercial driver's license or an individual driving a commercial motor vehicle who was required to have a commercial driver's license but was driving a commercial motor vehicle without the appropriate license in its main office. Records showing a record of conviction by a court of law shall be open to public inspection during business hours for six years from the date of their receipt, except for a record of conviction required to be retained for a longer period under federal law, which shall be retained as provided in federal law, or a record of conviction under Sections 66-8-101 through 66-8-112, which shall be retained for fifty-five years from the date of receipt. After the department has held a record of a conviction for the time period required under this subsection, that record shall be destroyed. Any record received on a person holding a commercial driver's license licensed in another state or country shall be forwarded to the licensing authority of that state or country.

**History:** 1953 Comp., § 64-8-135, enacted by Laws 1978, ch. 35, § 543; 1979, ch. 71, § 12; 1984, ch. 72, § 9; 1988, ch. 56, § 9; 1990, ch. 120, § 42; 1993, ch. 66, § 15; 1995, ch. 135, § 27; 2005, ch. 312, § 10; 2007, ch. 321, § 11; 2009, ch. 200, § 7; 2013, ch. 205, § 2; 2018, ch. 54, § 1.

## ANNOTATIONS

**Cross references.** — For records to be kept by the division, *see* 66-2-7, 66-5-23 NMSA 1978.

For reporting convictions of nonresidents, *see* 66-5-25 NMSA 1978.

For the driver's license compact, *see* 66-5-49 NMSA 1978.

For electronic authentication and substitution for signature, *see* 14-3-15.2 NMSA 1978.

**The 2018 amendment,** effective July 1, 2018, reduced the time that convictions are kept on record for holders of commercial driver's licenses, and provided an exception; and in Subsection I, after "during business hours for", deleted "fifty-five years" and added "six years", and after "date of their receipt", added "except for a record of conviction required to be retained for a longer period under federal law, which shall be retained as provided in federal law, or a record of conviction under Sections 66-8-101 through 66-8-112, which shall be retained for fifty-five years from the date of receipt. After the department has held a record of a conviction for the time period required under this subsection, that record shall be destroyed".

**The 2013 amendment,** effective July 1, 2013, required courts to notify the taxation and revenue department if a defendant fails to appear on a charge of violating the motor vehicle code; added Subsection B; in Subsection C, in the introductory sentence, after "later of entry of", deleted "judgment and sentence or failure to appear on a charge of violating" and added "a final disposition on a conviction for violation of" and after "court in which the entry of", deleted "judgment had sentence or failure to appear" and added "the final disposition"; in Paragraph (3) of Subsection C, after "sentence or both", deleted "forfeiture of bail or dismissal of the charge"; in Paragraph (4) of Subsection C, at the beginning of the sentence, deleted "an itemization of" and added "total"; and in Subsection G, at the beginning of the sentence, after "The", added "willful".

**The 2009 amendment,** effective July 1, 2009, in Subsection H, after "commercial driver's license", added "or an individual driving a commercial motor vehicle who was required to have a commercial driver's license but was driving a commercial motor vehicle without the appropriate license".

**The 2007 amendment,** effective April 2, 2007, added Subsection H providing for records of conviction of persons holding a commercial driver's license.

**The 2005 amendment,** effective July 1, 2005, changed the period of time when records of conviction under Sections 66-8-101 through 66-8-112 NMSA 1978 may be destroyed from twenty-five years to fifty-five years.

**The 1995 amendment,** effective June 16, 1995, substituted "department" for "division" throughout the section and "department" for "director" throughout the section; in Subsection B, substituted "of the later of" for "after" and "children's court" for "juvenile court" and added the language beginning "or the final" and ending "successfully taken"; in Subsection E, added the last sentence; and made a minor stylistic change in Subsection F.

**The 1993 amendment,** effective January 1, 1994, substituted "entry of judgment and sentence or failure to appear a" for "disposition of every", "the entry of judgment and sentence or failure to appear occurred" for "disposition was made", and "an abstract" for

"a record" in the introductory paragraph of Subsection B; and inserted "abstract of" in the first sentence of Subsection C.

**The 1990 amendment,** effective July 1, 1990, made minor stylistic changes in Subsection A; added the present second sentence in Subsection C; rewrote Subsection D which read "When the uniform traffic citation is used, the form of the record on the back of the officer's first copy containing the information required in Subsection B of this section shall be used by the court;" added the second sentence in Subsection E; and inserted "which may not be destroyed until twenty-five years from the date of their receipt" at the end of the second sentence of Subsection G.

**The 1988 amendment,** effective July 1, 1988, added the Subsection B(1) to B(5) designations and added Subsections B(6) to B(8); designated part of Subsection B as present Subsection C, substituting therein "record prepared and forwarded under Subsection B of this section shall be" for "record must be", and redesignated former Subsections C to F as present Subsections D to G.

**Division bound by plea bargain.** — When, pursuant to a plea bargain, the judgment and sentence upon conviction of a motorist for driving under the influence expressly provided that the conviction was to be treated as a first conviction under Section 66-8-102 NMSA 1978, the division was bound by the judgment and had no authority to revoke the motorist's license, even though the motorist had a previous conviction. *Collyer v. State Taxation & Revenue Dep't Motor Vehicle Div.*, 1996-NMCA-029, 121 N.M. 477, 913 P.2d 665.

## 66-8-136. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1995, ch. 135, § 29 repealed 66-8-136 NMSA 1978, as enacted by Laws 1978, ch. 35, § 544, relating to the penalties for violating confidentiality rules, effective June 16, 1995. For provisions of former section, *see* the 1994 NMSA 1978 on *NMOneSource.com.*

## 66-8-137. Compensation of judges and officers; defenses to prosecution.

A. No municipality or other political subdivision of this state shall employ any municipal judge, officer, agent or other person whose compensation in any way depends upon the apprehension, arrest or conviction of any person for violating the Motor Vehicle Code [66-1-1 NMSA 1978] or other state or local law, ordinance or regulation.

B. If any person is arrested or brought to trial for violation of the Motor Vehicle Code or other law, ordinance or regulation relating to motor vehicles punishable as a misdemeanor by any officer, agent or employee of any political subdivision, or before

any municipal judge, whose compensation depends in any way upon the arrest or conviction of persons violating these laws, ordinances or regulations, the fact of such compensation or that the person making the arrest was not in uniform at the time is a defense to the charge.

**History:** 1941 Comp., § 68-2613, enacted by Laws 1953, ch. 139, § 191.1; 1953 Comp., § 64-22-16; Laws 1968, ch. 62, § 167; recompiled as 1953 Comp., § 64-8-137, by Laws 1978, ch. 35, § 545.

**ANNOTATIONS**

**Cross references.** — For magistrate courts, *see* 35-1-1 NMSA 1978 et seq.

**Incremental payment for targeting the motoring public.** — Where defendant was arrested and charged in magistrate court with aggravated DWI; the officer's salary included incremental pay financed from a grant to assist the police department in targeting the motoring public; as part of the officer's duties, the officer was charged with arresting and convicting individuals for offenses that included DWI; the officer was required to submit monthly statistics which the police department used to report the number of accidents investigated and DWI arrests made; the officer's salary increased approximately two dollars per hour as a result of the grant; the officer's pay did not fluctuate with the number of arrests the officer made; and there was no evidence that the officer was required to actually arrest or convict a certain number of individuals in order for the police department to be eligible for the grant, that the officer was required to meet certain quotas to be eligible for the grant, or that the officer's pay was linked to the number of arrests or convictions, the officer's receipt of pay from the grant and the officer's obligation under the grant to make monthly statistical reports did not give rise to a defense under 66-8-137(B) NMSA 1978. *State v. Sanchez*, 2014-NMCA-095.

**This section provides that municipal magistrate's salary cannot depend upon** arrests and convictions for violations under the Motor Vehicle Code. 1969 Op. Att'y Gen. No. 69-129.

## 66-8-137.1. Nonresident Violator Compact; form.

The "Nonresident Violator Compact" is enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

NONRESIDENT VIOLATOR COMPACT

ARTICLE I. FINDINGS, DECLARATION OF POLICY AND PURPOSE.

A. The party jurisdictions find that:

(1) In most instances, a motorist who is cited for a traffic violation in a jurisdiction other than his home jurisdiction:

(a) must post collateral or bond to secure appearance for trial at a later date; or

(b) if unable to post collateral or bond, is taken into custody until the collateral or bond is posted; or

(c) is taken directly to court for his trial to be held.

(2) In some instances, the motorist's driver's license is deposited as collateral to be returned after he has complied with the terms of the citation.

(3) The purpose of the practices described in Paragraphs (1) and (2) above is to ensure compliance with the terms of a traffic citation by the motorist who, if permitted to continue on his way after receiving the traffic citation, could return to his home jurisdiction and disregard his duty under the terms of the traffic citation.

(4) A motorist receiving a traffic citation in his home jurisdiction is permitted, except for certain violations, to accept the citation from the officer at the scene of the violation and to immediately continue on his way after promising or being instructed to comply with the terms of the citation.

(5) The practice described in Paragraph (1) above causes unnecessary inconvenience and, at times, a hardship for the motorist who is unable at the time to post collateral, furnish a bond, stand trial or pay the fine and thus is compelled to remain in custody until some arrangement can be made.

(6) The deposit of a driver's license as a bail bond, as described in Paragraph (2) above, is viewed with disfavor.

(7) The practices described herein consume an undue amount of law enforcement time.

B. It is the policy of the party jurisdictions to:

(1) Seek compliance with the laws, ordinances and administrative rules and regulations relating to the operation of motor vehicles in each of the jurisdictions.

(2) Allow motorists to accept a traffic citation for certain violations and proceed on their way without delay whether or not the motorist is a resident of the jurisdiction in which the citation was issued.

(3) Extend cooperation to its fullest extent among the jurisdictions, each as to the other, for obtaining compliance with the terms of a traffic citation issued in one jurisdiction to a resident of another jurisdiction.

(4) Maximize effective utilization of law enforcement personnel and assist court systems in the efficient disposition of traffic violations.

C. The purpose of this compact is to:

(1) Provide a means through which jurisdictions may participate in a reciprocal program to effectuate the policies enumerated in Paragraph B above, in a uniform and orderly manner.

(2) Provide for the fair and impartial treatment of traffic violators operating within party jurisdiction in recognition of the motorist's right of due process and the sovereign status of a party jurisdiction.

## ARTICLE II. DEFINITIONS.

In the Nonresident Violator Compact, the following words have the meaning indicated.

(1) "Citation" means any summons, ticket or other official document issued by a police officer for a traffic violation containing an order which requires the motorist to respond.

(2) "Collateral" means any cash or other security deposited to secure an appearance for trial, following the issuance by a police officer of a citation for a traffic violation.

(3) "Court" means a court of law or traffic tribunal.

(4) "Driver's license" means any license or privilege to operate a motor vehicle issued under the laws of the home jurisdiction.

(5) "Home jurisdiction" means the jurisdiction that issued the driver's license of the traffic violator.

(6) "Issuing jurisdiction" means the jurisdiction in which the traffic citation was issued to the motorist.

(7) "Jurisdiction" means a state, territory or possession of the United States, the District of Columbia or the commonwealth of Puerto Rico.

(8) "Motorist" means a driver of a motor vehicle operating in a party jurisdiction other than the home jurisdiction.

(9) "Personal recognizance" means an agreement by a motorist made at the time of issuance of the traffic citation that he will comply with the terms of that traffic citation.

(10) "Police officer" means any individual authorized by the party jurisdiction to issue a citation for a traffic violation.

(11) "Terms of the citation" means those options expressly stated upon the citation.

## ARTICLE III. PROCEDURE FOR ISSUING JURISDICTION.

A. When issuing a citation for a traffic violation, a police officer shall issue the citation to a motorist who possesses a driver's license issued by a party jurisdiction and shall not, subject to the exceptions noted in Paragraph B of this article, require the motorist to post collateral to secure appearance, if the officer receives the motorist's signed personal recognizance that he will comply with the terms of the citation.

B. Personal recognizance is acceptable only if not prohibited by law. If mandatory appearance is required, it must take place immediately following issuance of the citation.

C. Upon failure of a motorist to comply with the terms of a traffic citation, the appropriate official shall report the failure to comply to the licensing authority of the jurisdiction in which the traffic citation was issued. The report shall be made in accordance with procedures specified by the issuing jurisdiction and shall contain information as specified in the compact manual as minimum requirements for effective processing by the recipient jurisdiction.

D. Upon receipt of the report, the licensing authority of the issuing jurisdiction shall transmit to the licensing authority in the home jurisdiction of the motorist the information in a form and content as contained in the compact manual.

E. The licensing authority of the issuing jurisdiction may not suspend the privilege of a motorist for whom a report has been transmitted.

F. The licensing authority of the issuing jurisdiction shall not transmit a report on any violation if the date of transmission is more than six months after the date on which the traffic citation was issued.

G. The licensing authority of the issuing jurisdiction shall not transmit a report on any violation where the date of issuance of the citation predates the most recent of the effective dates of entry for the two jurisdictions affected.

## ARTICLE IV. PROCEDURE FOR HOME JURISDICTION.

A. Upon receipt of a report of a failure to comply from the licensing authority of the issuing jurisdiction, the licensing authority of the home jurisdiction shall notify the motorist and initiate a suspension action, in accordance with the home jurisdiction's procedures, to suspend the motorist's driver's license until satisfactory evidence of

compliance with the terms of the traffic citation has been furnished to the home jurisdiction licensing authority. Due process safeguards will be afforded.

B. The licensing authority of the home jurisdiction shall maintain a record of actions taken and make reports to issuing jurisdictions as provided in the compact manual.

## ARTICLE V. APPLICABILITY OF OTHER LAWS.

Except as expressly required by provisions of this compact, nothing contained herein shall be construed to affect the right of any party jurisdiction to apply any of its other laws relating to licenses to drive to any person or circumstance, or to invalidate or prevent any driver license agreement or other cooperative arrangement between a party jurisdiction and a nonparty jurisdiction.

## ARTICLE VI. COMPACT ADMINISTRATOR PROCEDURES.

A. For the purpose of administering the provisions of this compact and to serve as a governing body for the resolution of all matters relating to the operation of this compact, a board of compact administrators is created. The board shall be composed of one representative from each party jurisdiction to be known as the compact administrator. The compact administrator shall be appointed by the jurisdiction executive and will serve and be subject to removal in accordance with the laws of the jurisdiction he represents. A compact administrator may provide for the discharge of his duties and the performance of his functions as a board member by an alternate. An alternate may not be entitled to serve unless written notification of his identity has been given to the board.

B. Compact administrators shall be entitled to one vote each on the board of directors. No action of the board shall be binding unless taken at a meeting at which a majority of the total number of votes on the board are cast in favor. Action by the board shall be only at a meeting at which a majority of the party jurisdictions are represented.

C. The board shall elect annually, from its membership, a chairman and a vice chairman.

D. The board shall adopt bylaws, not inconsistent with the provisions of this compact or the laws of a party jurisdiction, for the conduct of its business and shall have the power to amend and rescind its bylaws.

E. The board may accept for any of its purposes and functions under this compact any and all donations and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any jurisdiction, the United States or any other governmental agency and may receive, utilize and dispose of the same.

F. The board may contract with, or accept services or personnel from, any government or intergovernmental agency, person, firm or corporation, or any private nonprofit organization or institution.

G. The board shall formulate all necessary procedures and develop uniform forms and documents for administering the provisions of this compact. All procedures and forms adopted pursuant to board action shall be contained in the compact manual.

## ARTICLE VII. ENTRY INTO COMPACT AND WITHDRAWAL.

A. This compact shall become effective when it has been adopted by at least two jurisdictions.

B. (1) Entry into the compact shall be made by a resolution of ratification executed by the authorized officials of the applying jurisdiction and submitted to the chairman of the board.

(2) The resolution shall be in a form and content as provided in the compact manual and shall include statements that in substance are as follows:

(a) A citation of the authority by which the jurisdiction is empowered to become a party to this compact.

(b) Agreement to comply with the terms and provisions of the compact.

(c) That compact entry is with all jurisdictions then party to the compact and with any jurisdiction that legally becomes a party to the compact.

(3) The effective date of entry shall be specified by the applying jurisdiction, but it shall not be less than sixty days after notice has been given by the chairman of the board of compact administrators or by the secretariat of the board to each party jurisdiction that the resolution from the applying jurisdiction has been received.

C. A party jurisdiction may withdraw from this compact by official written notice to the other party jurisdictions, but a withdrawal shall not take effect until ninety days after notice of withdrawal is given. The notice shall be directed to the compact administrator of each member jurisdiction. No withdrawal shall affect the validity of this compact as to the remaining party jurisdictions.

## ARTICLE VIII. EXCEPTIONS.

The provisions of this compact shall not apply to parking or standing violations, highway weight and size limitations and violations of law governing the transportation of hazardous materials.

## ARTICLE IX. AMENDMENTS TO THE COMPACT.

A. This compact may be amended from time to time. Amendments shall be presented in resolution form to the chairman of the board of compact administrators and may be initiated by one or more party jurisdictions.

B. Adoption of an amendment shall require endorsement of all party jurisdictions and shall become effective thirty days after the date of the last endorsement.

C. Failure of a party jurisdiction to respond to the compact chairman within one hundred twenty days after receipt of the proposed amendment shall constitute endorsement.

ARTICLE X. CONSTRUCTION AND SEVERABILITY.

This compact shall be liberally construed so as to effectuate the purposes stated herein. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party jurisdiction or of the United States or the applicability thereof to any government, agency, person or circumstance, the compact shall not be affected thereby. If this compact shall be held contrary to the constitution of any jurisdiction party thereto, the compact shall remain in full force and effect as to the remaining jurisdictions and in full force and effect as to the jurisdiction affected as to all severable matters.

ARTICLE XI.

This compact shall be known as the "Nonresident Violator Compact".

**History:** Laws 1981, ch. 360, § 14.

## 66-8-137.2. Nonresident Violator Compact; definitions.

As used in the Nonresident Violator Compact:

A. "jurisdiction executive" means the governor; and

B. "licensing authority" means the director. The director shall furnish to the appropriate authorities of any other party state any information or documents reasonably necessary to facilitate the administration of the Nonresident Violator Compact.

**History:** Laws 1981, ch. 360, § 15; 1987, ch. 268, § 32.

**ANNOTATIONS**

**The 1987 amendment,** effective July 1, 1987, in Subsection B deleted "of the motor vehicle division of the transportation department" from the end of the first sentence.

## 66-8-137.3. Compact administrator; compensation.

The compact administrator for New Mexico, appointed by the governor, is not entitled to any compensation for his duties as administrator, but he may be reimbursed in accordance with the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

**History:** Laws 1981, ch. 360, § 16.

## 66-8-137.4. Bilateral agreements; noncompact jurisdictions; authority.

A. In addition to the Nonresident Violator Compact, it is the intent of the legislature that bilateral agreements be made with noncompact states; in particular, with those neighboring states which provide much of the traffic on New Mexico's highways and have not yet joined with the compact states. The purpose of such bilateral agreement is to accomplish the same reciprocal services and procedures that are provided in the Nonresident Violator Compact. If, in the judgment of the secretary of taxation and revenue of New Mexico, a bilateral agreement is in the best interest of the citizens of New Mexico, is fair and equitable and provides comparable benefits, privileges and exemptions to each state, the secretary is authorized to pledge New Mexico to the bilateral agreement and is signatory for this state.

B. It is the intent of the legislature that bilateral agreements be made with Indian tribes and pueblos. The purpose of such bilateral agreements is to provide for the administrative adjudication of motor vehicle offenses committed by Indians on Indian land.

**History:** Laws 1981, ch. 360, § 17; 1987, ch. 268, § 33.

**ANNOTATIONS**

**The 1987 amendment,** effective July 1, 1987, in Subsection A, in the third sentence, substituted "secretary of taxation and revenue" for "secretary of transportation" and made minor changes in language and punctuation throughout the section.

## 66-8-138. Consumption or possession of alcoholic beverages in open containers in a motor vehicle prohibited; exceptions.

A. No person shall knowingly drink any alcoholic beverage while in a motor vehicle upon any public highway within this state.

B. No person shall knowingly have in the person's possession on the person's body, while in a motor vehicle upon any public highway within this state, any bottle, can or other receptacle containing any alcoholic beverage that has been opened or had its seal broken or the contents of which have been partially removed.

C. It is unlawful for the registered owner of any motor vehicle to knowingly keep or allow to be kept in a motor vehicle, when the vehicle is upon any public highway within this state, any bottle, can or other receptacle containing any alcoholic beverage that has been opened or had its seal broken or the contents of which have been partially removed, unless the container is kept in:

(1) the trunk of the vehicle or in some other area of the vehicle not normally occupied by the driver or passengers if the vehicle is not equipped with a trunk. A utility or glove compartment shall be deemed to be within the area occupied by the driver and passengers;

(2) the living quarters of a motor home or recreational vehicle;

(3) a truck camper; or

(4) the bed of a pick-up truck when the bed is not occupied by passengers.

D. This section does not apply to any passenger in a bus, taxicab or limousine for hire licensed to transport passengers pursuant to the Motor Carrier Act [65-2A-1 to 65-2A-40 NMSA 1978] or proper legal authority.

**History:** 1978 Comp., § 66-8-138, enacted by Laws 1989, ch. 316, § 2; 1999, ch. 143, § 1; 2001, ch. 28, § 1; 2001, ch. 120, § 1; 2013, ch. 172, § 1.

## ANNOTATIONS

**Repeals and reenactments.** — Laws 1989, ch. 316, § 2 repealed 66-8-138 NMSA 1978, as enacted by Laws 1978, ch. 35, § 546, relating to operation of motor vehicle by person under twenty-one while possessing alcoholic liquor, and enacted a new section, effective June 16, 1989.

**Cross references.** — For driving while intoxicated, *see* 66-8-102 NMSA 1978.

For punishment of children for traffic violations, *see* 32A-2-29 NMSA 1978.

**The 2013 amendment,** effective June 14, 2013, eliminated certain exceptions to the prohibition against open containers of alcoholic beverages in a motor vehicle; in Paragraph (1) of Subsection B, added the second sentence; deleted the unnumbered paragraph following Paragraph (4) of Subsection B, which provided that a glove compartment was within the area occupied by the driver; and deleted former Subsection D, which provided that this section did not apply to persons who carry alcoholic beverages pursuant to a doctor’s recommendation or to clergymen who carry alcoholic beverages for religious purposes in their motor vehicle.

**The 2001 amendment,** effective June 15, 2001, inserted "not" preceding "occupied by passengers" in Paragraph C(4); and deleted former Paragraph D(3), which read "any

person who is employed by a person licensed by the Liquor Control Act, while discharging his duties as an employee".

**The 1999 amendment,** effective July 1, 1999, deleted "the driver or owner of or" following "does not apply to" in the second sentence of the undesignated paragraph following Subsection C(4) and substituted "Liquor" for "Alcoholic Beverage" in Subsection D(3).

**Meaning of "possession on his person".** — The phrase "on his person" in Subsection B of Section 66-8-138 NMSA 1978 means that the open container statute cannot be violated by mere constructive possession of an open container and requires more than facts merely showing that an open container was located within a defendant's vehicle, but it does not go so far as requiring that a defendant must be observed in actual physical possession of an open container. *State v. Nevarez*, 2010-NMCA-049, 148 N.M. 820, 242 P.3d 387, cert. denied, 2010-NMCERT-006, and cert. quashed, 2011-NMCERT-001, 150 N.M. 558, 263 P.3d 900.

Where the court instructed the jury that to find defendant guilty of possession of an open container of alcohol, the state had to prove, among other elements, that defendant had in his immediate possession an open container of alcohol with alcohol remaining in it; the court declined to give the jury a curative instruction in response to the jury's question whether immediate possession meant in the vehicle or in the driver's possession; police officers testified that the passengers in defendant's vehicle all had open containers of beer which they were drinking; and there was no evidence to link any particular open container in the vehicle specifically to defendant's possession such that it might be considered on defendant's person, the jury instruction did not accurately capture or describe the crime of possession of an open container and the uncured jury instruction resulted in fundamental error. *State v. Nevarez*, 2010-NMCA-049, 148 N.M. 820, 242 P.3d 387, cert. denied, 2010-NMCERT-006, and cert. quashed, 2011-NMCERT-001, 150 N.M. 558, 263 P.3d 900.

**Conviction based upon properly obtained evidence.** — Where the warrantless entry by police officers into the car to seize a gun was supported by exigent circumstances, the officers' reasonable suspicion that defendant was armed and dangerous, defendant's admission that he had been drinking was the fruit of a lawful entry into the car and therefore defendant's claim that his conviction under this section was based upon evidence obtained in violation of his constitutional rights was rejected. *State v. Garcia*, 2004-NMCA-066, 135 N.M. 595, 92 P.3d 41, cert. granted, 2004-NMCERT-005, 135 N.M. 566, 92 P.3d 12.

**Mere presence of open container.** — The mere presence of defendant in a vehicle in which an open container of alcohol was found was not sufficient to create an individualized suspicion that defendant was violating the open container law. *State v. Patterson*, 2006-NMCA-037, 139 N.M. 322, 131 P.3d 1286, cert. denied, 2006-NMCERT-003, 139 N.M. 352, 132 P.3d 1038.

## 66-8-139. Penalties.

A. Whoever is guilty of a second or subsequent violation of any provision of Section 66-8-138 NMSA 1978 is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 66-8-7 NMSA 1978.

B. In addition to any other penalty or disposition ordered pursuant to law, upon conviction for a second or subsequent violation of the provisions of Section 66-8-138 NMSA 1978, the convicted person shall have his driver's license revoked for a period of three months upon a second violation and for one year upon a third or subsequent violation.

C. This section does not affect the authority of a municipality under a proper ordinance to prescribe penalties for possession or consumption of alcoholic beverages while driving a motor vehicle. A violation under a municipal ordinance prescribing penalties for possession or consumption of alcoholic beverages while driving a motor vehicle shall be deemed to be a violation under this section for purposes of determining second, third and subsequent violations of this section.

**History:** 1978 Comp., § 66-8-139, enacted by Laws 1989, ch. 316, § 3; 1991, ch. 192, § 10.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1989, ch. 316, § 3, repealed former 66-8-139 NMSA 1978, as enacted by Laws 1978, ch. 35, § 547, relating to penalty for violation, and enacted a new 66-8-139 NMSA 1978, effective June 16, 1989.

**The 1991 amendment,** effective June 14, 1991, rewrote Subsection A to substitute "and shall be sentenced pursuant to the provisions of Section 66-8-7 NMSA 1978" for specific penalty provisions.

## 66-8-140. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1990, ch. 120, § 45 repealed 66-8-140 NMSA 1978, as enacted by Laws 1978, ch. 35, § 548, relating to definition of "alcoholic beverages", effective July 1, 1990. For provisions of former section, *see* the 1989 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* 66-1-4.1 NMSA 1978.

## 66-8-141. Dishonored checks; civil penalty.

A. Any person who pays any fee pursuant to the Motor Vehicle Code [66-1-1 NMSA 1978] by check to the department and which check is dishonored upon presentation is

liable to the department for the fees together with a penalty of not less than ten dollars ($10.00) for each such check.

B. Any identification card, license, permit, registration, plate, title or other document issued by the department pursuant to the Motor Vehicle Code that requires payment and the payment is not made because the check offered in payment is dishonored upon presentation shall be canceled, suspended or revoked for failure to make payment. Any reinstatement fee due pursuant to Section 66-5-33.1 NMSA 1978 shall be in addition to the penalty provided for in Subsection A of this section.

**History:** 1953 Comp., § 64-6-34, enacted by Laws 1978, ch. 35, § 369; 1989, ch. 318, § 20; 1991, ch. 160, § 14; 1978 Comp., § 66-6-34, recompiled as 1978 Comp., § 66-8-141 by Laws 1995, ch. 135, § 28.

**ANNOTATIONS**

**The 1991 amendment,** effective July 1, 1991, deleted "Motor vehicle division fees" at the beginning of the section heading; substituted "department" for "division" in three places; inserted "pursuant to the Motor Vehicle Code" in two places; substituted "not less than ten dollars ($10.00)" for "five dollars ($5.00)" in Subsection A; and, in the second sentence in Subsection B, deleted "or 66-5-223" preceding "NMSA 1978" and "five dollar ($5.00)" preceding "penalty".

**The 1989 amendment,** effective July 1, 1989, designated the formerly undesignated provisions as Subsection A, making a minor stylistic change therein, and added Subsection B.

# ARTICLE 9
# Snowmobiles (Repealed.)

## 66-9-1. Repealed.

**History:** 1953 Comp., § 64-36-1, enacted by Laws 1971, ch. 177, § 1; repealed Laws 2005, ch. 325, § 25.

**ANNOTATIONS**

**Repeals.** — Laws 2005, ch. 325, § 25 repealed 66-9-1 NMSA 1978, as enacted by Laws 1971, ch. 177, § 1, the short title for the Snowmobile Act, effective January 1, 2006. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com.* For current law, *see* Off-Highway Motor Vehicle Act, 66-3-1020 NMSA 1978.

## 66-9-2. Repealed.

**History:** 1953 Comp., § 64-36-2, enacted by Laws 1971, ch. 177, § 2; repealed Laws 2005, ch. 325, § 25.

**ANNOTATIONS**

**Repeals.** — Laws 2005, ch. 325, § 25 repealed 66-9-2 NMSA 1978, as enacted by Laws 1971, ch. 177, § 2, relating to definitions, effective January 1, 2006. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com.* For current law, *see* Off-Highway Motor Vehicle Act, 66-3-1020 NMSA 1978.

## 66-9-3. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 40, § 1 repealed 66-9-3 NMSA 1978, as enacted by Laws 1971, ch. 177, § 3, relating to snowmobile registration, effective June 14, 1985.

## 66-9-4. Repealed.

**History:** 1953 Comp., § 64-36-3.1, enacted by Laws 1973, ch. 86, § 1; repealed Laws 2005, ch. 325, § 25.

**ANNOTATIONS**

**Repeals.** — Laws 2005, ch. 325, § 25 repealed 66-9-4 NMSA 1978, as enacted by Laws 1973, ch. 86, § 1, relating to rules and regulations, effective January 1, 2006. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com.* For current law, *see* Off-Highway Motor Vehicle Act, 66-3-1020 NMSA 1978.

## 66-9-5 to 66-9-7. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 40, § 1 repealed 66-9-5, 66-9-6 and 66-9-7 NMSA 1978, as enacted by Laws 1971, ch. 177, §§ 4, 5 and 6, respectively, relating to registration, exemption from registration, and dealer demonstration certificates for snowmobiles, effective June 14, 1985.

## 66-9-8. Repealed.

**History:** 1953 Comp., § 64-36-7, enacted by Laws 1971, ch. 177, § 7; 1973, ch. 198, § 1; repealed Laws 2005, ch. 325, § 25.

**ANNOTATIONS**

**Repeals.** — Laws 2005, ch. 325, § 25 repealed 66-9-8 NMSA 1978, as enacted by Laws 1971, ch. 177, § 7, relating to snowmobile equipment, effective January 1, 2006. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com.* For current law, *see* Off-Highway Motor Vehicle Act, 66-3-1020 NMSA 1978.

## 66-9-9. Repealed.

**History:** 1953 Comp., § 64-36-8, enacted by Laws 1971, ch. 177, § 8; 1983, ch. 271, § 2; repealed Laws 2005, ch. 325, § 25.

**ANNOTATIONS**

**Repeals.** — Laws 2005, ch. 325, § 25 repealed 66-9-9 NMSA 1978, as enacted by Laws 1971, ch. 177, § 8, relating to operation of snowmobiles on streets or highways, effective January 1, 2006. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com.* For current law, *see* Off-Highway Motor Vehicle Act, 66-3-1020 NMSA 1978.

## 66-9-10. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 40, § 1, repealed 66-9-10 NMSA 1978, as enacted by Laws 1971, ch. 177, § 9, relating to liability and the prohibition of local registration of snowmobiles, effective June 14, 1985.

## 66-9-11. Repealed.

**History:** 1953 Comp., § 64-36-10, enacted by Laws 1971, ch. 177, § 10; repealed Laws 2005, ch. 325, § 25.

**ANNOTATIONS**

**Repeals.** — Laws 2005, ch. 325, § 25 repealed 66-9-11 NMSA 1978, as enacted by Laws 1971, ch. 177, § 10, relating to snowmobile accidents and accident reports, effective January 1, 2006. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com.* For current law, *see* Off-Highway Motor Vehicle Act, 66-3-1020 NMSA 1978.

## 66-9-12. Repealed.

**History:** 1953 Comp., § 64-36-11, enacted by Laws 1971, ch. 177, § 11; repealed Laws 2005, ch. 325, § 25.

**ANNOTATIONS**

**Repeals.** — Laws 2005, ch. 325, § 25 repealed 66-9-12 NMSA 1978, as enacted by Laws 1971, ch. 177, § 11, relating to enforcement, effective January 1, 2006. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com.* For current law, *see* Off-Highway Motor Vehicle Act, 66-3-1020 NMSA 1978.

## 66-9-13. Repealed.

**History:** 1953 Comp., § 64-36-12, enacted by Laws 1971, ch. 177, § 12; repealed Laws 2005, ch. 325, § 25.

**ANNOTATIONS**

**Repeals.** — Laws 2005, ch. 325, § 25 repealed 66-9-13 NMSA 1978, as enacted by Laws 1971, ch. 177, § 12, relating to penalties for violations of the Snowmobile Act, effective January 1, 2006. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com.* For current law, *see* Off-Highway Motor Vehicle Act, 66-3-1020 NMSA 1978.

# ARTICLE 10
# Driver Education Schools

## 66-10-1. Short title.

Chapter 66, Article 10 NMSA 1978 may be cited as the "Driving School Licensing Act".

**History:** 1953 Comp., § 64-35-1, enacted by Laws 1967, ch. 185, § 1; 1993, ch. 68, § 45.

**ANNOTATIONS**

**Cross references.** — For instruction permits for student drivers, *see* 66-5-8 NMSA 1978.

For vehicles on loan from dealers and used in approved driver training programs not being registered, *see* 66-6-15 NMSA 1978.

**The 1993 amendment,** effective July 1, 1993, substituted "Chapter 66, Article 10 NMSA 1978" for "This act".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 50, 111.

## 66-10-2. Driver education schools; driver education instructors; license required.

No person, firm, association or corporation shall operate a driver education school or engage in the business of giving instruction for hire in the driving of motor vehicles or in the preparation of an applicant for examination for a Class D, E or M driver's license unless a license has been secured from the bureau.

**History:** 1953 Comp., § 64-35-2, enacted by Laws 1967, ch. 185, § 2; 1993, ch. 68, § 46.

**ANNOTATIONS**

**The 1993 amendment,** effective July 1, 1993, substituted "education" for "training" in the catchline and text of the section, substituted "a class D, E or M driver's" for "an operator's or chauffeur's" and substituted "bureau" for "state department of education", and made a minor stylistic change.

**Traffic safety bureau's authority to approve motor vehicle accident prevention courses.** — Nonprofit corporations that provide motor vehicle accident prevention courses approved by the traffic safety bureau and are engaged in providing courses exclusively for drivers who are fifty years of age or older are exempt from the Driver's School Licensing Act's (DSL Act) requirements, 66-10-12 NMSA 1978; this exemption does not suggest that the traffic safety bureau may only approve accident prevention courses for older drivers when they are provided by nonprofit corporations. The DSL Act requires the traffic safety bureau to license any "person, firm, association or corporation" including for-profit entities, it deems qualified to operate a driver education school or engage in the business of giving instruction for hire in the driving of motor vehicles. *Exemption from Driving School Licensing Act* (12/12/17), Att'y Gen. Adv. Ltr. 2017-07.

## 66-10-3. Qualifications of driver education schools; fees.

Every applicant in order to qualify to operate a driver education school shall meet the following requirements:

A. maintain bodily injury and public damage liability insurance on all motor vehicles used in driving instruction in the amounts and form as prescribed by law or regulation of the bureau;

B. have the equipment necessary to the giving of proper instruction in the operation of motor vehicles; and

C. pay to the bureau an annual license fee to be set by regulation of the bureau.

**History:** 1953 Comp., § 64-35-3, enacted by Laws 1967, ch. 185, § 3; 1993, ch. 68, § 47.

**ANNOTATIONS**

**The 1993 amendment,** effective July 1, 1993, substituted "education" for "training" in the section heading and in the introductory paragraph; added "fees" at the end of the section heading; added "or regulation of the bureau" at the end of Subsection A; and rewrote Subsection C, which read "pay to the state department of education an annual license fee of fifty dollars ($50.00)".

## 66-10-4. Qualifications of driver education instructors.

Every person in order to qualify as an instructor for a driver education school shall meet the following requirements:

A. possess qualifications as prescribed by the bureau;

B. be physically able to operate safely a motor vehicle and to train others in the operation of motor vehicles;

C. hold a valid operator's or chauffeur's license; and

D. pay to the bureau an annual license fee to be set by regulation of the bureau.

**History:** 1953 Comp., § 64-35-4, enacted by Laws 1967, ch. 185, § 4; 1993, ch. 68, § 48; 2013, ch. 212, § 1.

**ANNOTATIONS**

**The 2013 amendment,** effective June 14, 2013, removed the requirement that a person hold a valid New Mexico operator’s or chauffeur’s license to qualify to be a driver education instructor; and in Subsection C, after "valid", deleted "New Mexico".

**The 1993 amendment,** effective July 1, 1993, substituted "education" for "training" in the section heading and in the introductory paragraph; substituted "bureau" for "department of education" and "state department of education" in Subsections A and D; and substituted "to be set by regulation of the bureau" for "of five dollars ($5.00)" at the end of Subsection D.

## 66-10-5. Issuance of licenses to driver education schools and to driver education instructors.

A. The bureau shall issue a license certificate to each applicant to conduct a driver education school or to each driver education instructor when it is satisfied that the person has met the qualifications required under the Driving School Licensing Act and if

a school complies with the minimum driver education program standards established by the bureau.

B. The bureau shall prescribe minimum driver training program standards.

C. All licenses issued pursuant to the provisions of the Driving School Licensing Act shall expire annually, unless canceled, suspended or revoked sooner. The bureau shall establish annual expiration dates for the licenses by rule, and each category of driving school may have a different license expiration date. Licenses shall be renewed subject to application and payment of the required fee.

**History:** 1953 Comp., § 64-35-5, enacted by Laws 1967, ch. 185, § 5; 1993, ch. 68, § 49; 2007, ch. 187, § 1.

**ANNOTATIONS**

**Cross references.** — For approved driver education courses in high schools, *see* 22-13-12 NMSA 1978.

**The 2007 amendment,** effective July 1, 2007, amended Subsection C to require the bureau to establish annual expiration dates for licenses by rule and permits each category of driving school to have a different license expiration date.

**The 1993 amendment,** effective July 1, 1993, substituted "education" for "training" in two places in the section heading and throughout the section; substituted "bureau" for "appropriate division of the state department of education, as determined by the state superintendent of public instruction" near the beginning of Subsection A, and for "department" and "state department of education" at the end of Subsection A and in Subsection B; deleted the former second sentence of Subsection B, pertaining to the program standards; and made minor stylistic changes throughout the section.

## 66-10-6. Powers of bureau.

A. prescribe the forms and procedures necessary for the making of applications and the licensing of driver education schools and driver education instructors pursuant to the provisions of the Driving School Licensing Act;

B. require periodic and annual reports from the licensed schools on the number and types of pupils enrolled and trained and such other matters as it deems necessary;

C. require the licensed schools to keep and maintain certain records;

D. prescribe forms for and supply serially numbered uniform certificates of course completion to owners, primary consignees or operators of courses approved by the bureau and charge a fee not to exceed one dollar ($1.00) per certificate. The uniform certificates of course completion shall be printed on copy resistant paper in not less

than two self-copying parts so as to provide a control copy of the certificate that shall be retained by the course provider. Each certificate shall include an identifying number that will allow the court or bureau to verify its authenticity with the course provider. Upon successful completion of a course, licensed schools shall issue to each pupil a certificate of completion;

E. require each driver education school to post a surety bond with the bureau in the amount of fifteen thousand dollars ($15,000);

F. suspend or revoke, subject to the procedures prescribed in the Uniform Licensing Act, any license issued to a driver education school or to a driver education instructor when it is found that the licensee has failed to maintain the qualifications or standards required by the Driving School Licensing Act for the issuance of the initial license;

G. develop and adopt rules needed to administer the Driving School Licensing Act and to license driver education schools and instructors;

H. set annual licensure fees for:

(1) driver education schools, not to exceed five hundred dollars ($500) per year;

(2) driver education instructors, not to exceed one hundred dollars ($100) per year; and

(3) driver education school extension locations, not to exceed thirty-five dollars ($35.00) per year; and

I. set by rule the enrollment fees that may be charged to a student by a private driver education school.

**History:** 1953 Comp., § 64-35-6, enacted by Laws 1967, ch. 185, § 6; 1993, ch. 68, § 50; 2021, ch. 41, § 1.

## ANNOTATIONS

**The 2021 amendment,** effective June 18, 2021, increased the required surety bond for driver education schools; and in Subsection E, after "in the amount of", changed "five thousand dollars ($5,000)" to "fifteen thousand dollars ($15,000)".

**The 1993 amendment,** effective July 1, 1993, substituted "bureau" for "department" in the section heading, "bureau shall" for "state department of education may" in the introductory paragraph, and "education" for "training" throughout the section; added present Subsections D and E, and Subsections G to I; and redesignated former Subsection D as present Subsection F.

## 66-10-7. Disposition of fees.

All fees received by the bureau for licenses or certificates issued pursuant to the Driving School Licensing Act [Chapter 66, Article 10 NMSA 1978] shall be deposited with the state treasurer and placed in the general fund.

**History:** 1953 Comp., § 64-35-7, enacted by Laws 1967, ch. 185, § 7; 1993, ch. 68, § 51.

**ANNOTATIONS**

**The 1993 amendment,** effective July 1, 1993, substituted "bureau" for "state department of education" and inserted "or certificates".

## 66-10-8. Application.

The provisions of the Driving School Licensing Act shall not apply to authorized driver training programs conducted by any public, parochial, or other schools providing the curriculum and grade sequence that allows a student to secure a high school education. Other exemptions include state and federal agencies, or local political subdivisions, and the provisions shall not apply to any person giving driver instruction to another person without charge.

**History:** 1953 Comp., § 64-35-8, enacted by Laws 1967, ch. 185, § 8.

## 66-10-9. Motorcycle driver education programs.

A. Any driver education school licensed under the Driving School Licensing Act may offer a motorcycle driver education program in accordance with regulations promulgated by the bureau.

B. The bureau shall prescribe minimum motorcycle driver education program standards.

C. The Driving School Licensing Act applies to any program offered under this section.

**History:** 1953 Comp., § 64-35-9, enacted by Laws 1973, ch. 381, § 3; 1993, ch. 68, § 52.

**ANNOTATIONS**

**Cross references.** — For motorcycle driver training programs in high schools, *see* 22-13-12 NMSA 1978.

**The 1993 amendment,** effective July 1, 1993, substituted "education" for "training" in the section heading and throughout the section, "Driving School Licensing Act" for "Driver School Licensing Act" in Subsections A and C, and "bureau" for "state department of education" in Subsections A and B; and deleted the former second sentence of Subsection B, pertaining to the program standards.

## 66-10-10. Motorcycle training fund created; purpose.

A. There is created in the state treasury the "motorcycle training fund". The fund shall be invested in accordance with the provisions of Section 6-10-10 NMSA 1978, and all income earned on the fund shall be credited to the fund.

B. The motorcycle training fund shall be used to institute and provide a statewide system of motorcycle training and driver awareness and education in the dangers of driving while under the influence of alcohol or drugs for first-time license applicants and to provide for the purchase of necessary equipment and provide for such support services as are necessary for the establishment and maintenance of the system.

C. First-time applicants for a motorcycle license or an endorsement on their New Mexico driver's license may be required to complete a motorcycle driver education program as prescribed by the rules and regulations of the bureau.

D. The bureau shall adopt rules and regulations as prescribed in the State Rules Act [Chapter 14, Article 4 NMSA 1978] for the administration of a statewide motorcycle driver education program to be administered by the bureau. The program shall include, but not be limited to:

(1) helmet use and effectiveness;

(2) motorcycle accident and fatality statistics;

(3) drug and alcohol abuse information, laws and statistics;

(4) street and highway safe driving habits; and

(5) defensive driving.

E. The bureau shall cooperate with the state department of public education to distribute information through the public school systems.

F. All money in the motorcycle training fund is appropriated to the bureau for the purpose of carrying out the provisions of Subsection B of this section; provided that at the end of the seventy-second fiscal year and all subsequent fiscal years, all money in the motorcycle training fund in excess of the amount budgeted for the purposes delineated in Subsection B of this section shall revert to the state road fund.

**History:** Laws 1983, ch. 266, § 1; 1989, ch. 164, § 3; 1993, ch. 68, § 53.

**ANNOTATIONS**

**The 1993 amendment,** effective July 1, 1993, substituted "driver education" for "training" in Subsection C and in the introductory paragraph of Subsection D, "bureau" for "state highway and transportation department" in four places throughout the section, "administered by the bureau" for "administered through the field offices of the motor vehicle division" at the end of the first sentence of Subsection D, and "state department of public education" for "department of education" in Subsection E, and deleted "to help reduce or eliminate duplication of services and programs and" preceding "to distribute" in Subsection E.

**The 1989 amendment,** effective June 16, 1989, substituted "state highway and transportation department" for "transportation department" throughout the section and "state road fund" for "general fund" at the end of Subsection F.

## 66-10-11. Driving safety training considered by the court.

In addition to other sentencing or penalty provisions of law, when a person is convicted of a penalty assessment misdemeanor or other misdemeanor committed while operating a motor vehicle, each court is authorized to and shall consider ordering that offender to take any driving safety course certified by the bureau but shall not specify a particular provider.

**History:** Laws 1993, ch. 68, § 54.

## 66-10-12. Exempt providers.

The Driving School Licensing Act shall not apply to nonprofit corporations that provide motor vehicle accident prevention courses approved by the traffic safety bureau of the department of transportation and that are engaged in providing courses exclusively for drivers who are fifty years of age or older.

**History:** Laws 1993, ch. 68, § 55; 2015, ch. 6, § 1.

**ANNOTATIONS**

**The 2015 amendment,** effective July 1, 2015, amended the exemption from the Driving School Licensing Act by requiring motor vehicle accident prevention courses under this section to be approved by the traffic safety bureau of the department of transportation, and by reducing, to fifty years old, the minimum age of course participants for these accident prevention courses; after prevention courses, deleted "that fulfill the requirements of Section 59A-32-14 NMSA 1978", and added "approved by the traffic safety bureau of the department of transportation", and after "drivers who are", deleted "fifty-five" and added "fifty".

**Traffic safety bureau's authority to approve motor vehicle accident prevention courses.** — Nonprofit corporations that provide motor vehicle accident prevention courses approved by the traffic safety bureau and are engaged in providing courses exclusively for drivers who are fifty years of age or older are exempt from the Driver's School Licensing Act's (DSL Act) requirements, 66-10-12 NMSA 1978; this exemption does not suggest that the traffic safety bureau may only approve accident prevention courses for older drivers when they are provided by nonprofit corporations. The DSL Act requires the traffic safety bureau to license any "person, firm, association or corporation" including for-profit entities, it deems qualified to operate a driver education school or engage in the business of giving instruction for hire in the driving of motor vehicles. *Exemption from Driving School Licensing Act* (12/12/17), Att'y Gen. Adv. Ltr. 2017-07.

# ARTICLE 11
# Vehicles of Historic and Special Significance

## 66-11-1. Purpose.

Recognizing the importance of constructive leisure pursuits by New Mexico citizens, this act [66-11-1 to 66-11-5 NMSA 1978] is intended to encourage responsible participation in the hobby of collecting, preserving, restoring and maintaining motor vehicles of historic and special interest. Further, New Mexico, recognizing that the current pattern of resource recycling leads to an ever-shortening period of existence for vehicles of historic or special interest establishes this act to ensure the preservation of our American heritage as it relates to the motor vehicle manufacturing industry. Further, this act recognizes that a vehicle representative of this heritage, being held by a hobbyist, finds significance as an historic or special interest vehicle through a personal relevance to the life of the collector holding it and through a general relevance as an example-artifact of the transportation history of New Mexico.

**History:** 1953 Comp., § 64-41-1, enacted by Laws 1975, ch. 35, § 1.

**ANNOTATIONS**

**Cross references.** — For special "horseless carriage" plates, *see* 66-3-27 NMSA 1978.

## 66-11-2. Definitions.

For the purposes of this act [66-11-1 to 66-11-5 NMSA 1978]:

A. "collector" means the owner of one or more vehicles of historic or special interest who collects, purchases, acquires, trades or disposes of these vehicles or parts thereof for his own use in order to preserve, restore and maintain a vehicle for hobby purposes;

B. "parts car" means a motor vehicle generally in nonoperable condition which is owned by a collector to furnish parts that are usually nonobtainable from normal sources, thus enabling a collector to preserve, restore and maintain a motor vehicle of historic or special interest; and

C. "historic or special interest vehicle" means a vehicle of any age which, because of its significance, is being collected, preserved, restored or maintained by a hobbyist as a leisure pursuit.

**History:** 1953 Comp., § 64-41-2, enacted by Laws 1975, ch. 35, § 2.

## 66-11-3. Storage provisions.

A collector may store motor vehicles or parts thereof on his private property provided such vehicles and parts cars, and the outdoor storage areas, are maintained in such a manner that they do not constitute a health, safety or fire hazard and are effectively screened from ordinary public view by means of a solid fence, trees, shrubbery or other appropriate means. Such storage areas shall be kept free of weeds, trash and other objectional [objectionable] items.

**History:** 1953 Comp., § 64-41-3, enacted by Laws 1975, ch. 35, § 3.

## 66-11-4. Special equipment.

A. Unless the presence of equipment named by the Motor Vehicle Code [66-1-1 NMSA 1978] was a prior condition for legal sale within New Mexico at the time the historic or special interest vehicle was manufactured for first use, the presence of such equipment shall not be required as a condition for current legal use.

B. Any motor vehicle of historic or special interest, manufactured prior to the date when any emission controls were standard equipment on that particular make or model of vehicle is exempted from the laws requiring any inspection and use of such controls.

C. Any safety equipment that was manufactured as a part of the vehicle's original equipment must be in proper operating condition when the vehicle is operated for highway purposes.

**History:** 1953 Comp., § 64-41-4, enacted by Laws 1975, ch. 35, § 4.

**ANNOTATIONS**

**Cross references.** — For the equipment provisions of the Motor Vehicle Code, *see* 66-3-801 NMSA 1978 et seq.

## 66-11-5. Sale or trade.

The sale or trade and subsequent legal transfer of a motor vehicle or parts car of historic or special interest shall not be contingent upon any condition that would require the vehicle or parts car to be in operating condition at the time of sale or transfer of ownership.

**History:** 1953 Comp., § 64-41-5, enacted by Laws 1975, ch. 35, § 5.

# ARTICLE 12
# Boating

## 66-12-1. Short title.

Chapter 66, Article 12 NMSA 1978 may be cited as the "Boat Act".

**History:** 1953 Comp., § 75-35-1, enacted by Laws 1959, ch. 338, § 1; 1987, ch. 247, § 4.

**ANNOTATIONS**

**The 1987 amendment,** effective July 1, 1987, substituted "Chapter 66, Article 12 NMSA 1978" for "this act".

**Act does not affect charging of lake use fee.** — The state park commission (now state parks division) may continue to charge a lake use fee on a state park lake under Section 16-2-7 NMSA 1978 in addition to any requirements set up in the Boat Act (Sections 66-12-1 to 66-12-5, 66-12-7 to 66-12-22 NMSA 1978). 1960 Op. Att'y Gen. No. 60-78.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 12 Am. Jur. 2d Boats and Boating §§ 1, 4 to 22.

Liability of owner or operator of motorboat for injury or damage, 63 A.L.R.2d 343, 71 A.L.R.3d 1018, 98 A.L.R.3d 1127.

Public rights of recreational boating, fishing, wading, or the like in the inland stream the bed of which is privately owned, 6 A.L.R.4th 1030.

## 66-12-2. Purpose of act.

The purpose of the Boat Act is to promote safety for persons and property in and connected with the use, operation and equipment of vessels and to promote the uniformity of laws relating thereto.

**History:** 1953 Comp., § 75-35-2, enacted by Laws 1959, ch. 338, § 2.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Validity of prohibition or regulation of bathing, swimming, boating, fishing, or the like, to protect public water supply, 56 A.L.R.2d 790.

Rights of fishing, boating, bathing, or the like in inland lakes, 57 A.L.R.2d 569.

"Vehicle" or "land vehicle" within meaning of insurance policy provisions defining risks covered or excepted, 65 A.L.R.3d 824.

Coverage under all risks yacht policy, 75 A.L.R.3d 410.

Validity, construction, and application of state statutes and local ordinances governing personal watercraft use, 118 A.L.R.5th 347.

## 66-12-3. Definitions.

As used in the Boat Act:

A. "vessel" means every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water;

B. "motorboat" means any vessel propelled by machinery, whether or not machinery is the principal source of propulsion, but does not include a vessel that has a valid marine document issued by the bureau of customs of the United States government or any federal agency successor thereto; "motorboat" includes any vessel propelled or designed to be propelled by sail and that does not have a valid document issued by a federal agency, but does not include a sailboard or windsurf board;

C. "owner" means a person, other than a lienholder, having the property in or title to a motorboat; "owner" includes a person entitled to the use or possession of a motorboat subject to an interest in another person, reserved or created by agreement and securing payment or performance of an obligation, but excludes a lessee under a lease not intended as security;

D. "waters of this state" means waters within the territorial limits of this state;

E. "person" means an individual, partnership, firm, corporation, association or other entity;

F. "operate" means to navigate or otherwise use a motorboat or a vessel;

G. "state agency" means any department, institution, board, bureau, commission, district or committee of the government of this state and means every office or officer of any state agency;

H. "subdivision of the state" means every county, county institution, board, bureau or commission, incorporated city, town or village, drainage, conservancy, irrigation or other district and every office or officer of any subdivision of this state;

I. "division" means the state parks division of the energy, minerals and natural resources department;

J. "boat" means a motorboat that is ten feet in length or longer;

K. "dealer" means any person who engages in whole or in part in the business of buying, selling or exchanging new and unused motorboats or used motorboats, or both, either outright or on conditional sale, bailment, lease, chattel mortgage or otherwise and who has an established place of business for sale, trade and display of motorboats; "dealer" includes a yacht broker;

L. "lien" means every chattel mortgage, conditional sales contract, lease, purchase lease, sales lease, contract, security interest under the Uniform Commercial Code [Chapter 55 NMSA 1978] or other instrument in writing having the effect of a mortgage or lien or encumbrance upon, or intended to hold the title to any boat in the former owner, possessor or grantor;

M. "manufacturer" means any person engaged in the business of manufacturing or importing new and unused motorboats for the purpose of sale or trade;

N. "demonstration" means:

(1) the operation of a motorboat on the waters of this state for the purpose of selling, transferring, bartering, trading, negotiating or attempting to negotiate the sale or exchange of an interest in a motor boat; or

(2) the operation of a motorboat by a manufacturer for the purpose of testing the motorboat; and

O. "established place of business" means a salesroom in an enclosed building or structure that the dealer owns or leases, where the business of bartering, trading and selling of motorboats is conducted and where the books, records and files necessary to conduct the business are maintained.

**History:** 1953 Comp., § 75-35-3, enacted by Laws 1959, ch. 338, § 3; 1965, ch. 16, § 1; 1977, ch. 254, § 96; 1985, ch. 117, § 1; 1987, ch. 234, § 43; 1987, ch. 245, § 1; 1987, ch. 247, § 5; 1991, ch. 240, § 1; 2003, ch. 410, § 2.

## ANNOTATIONS

**The 2003 amendment,** effective June 20, 2003, deleted "any" preceding "waters within the" in Subsection D; substituted "parks" for "park and recreation" preceding "division of the" in Subsection I; and added Subsections N and O.

**The 1991 amendment,** effective June 14, 1991, inserted "energy, minerals and" in Subsection I.

**The 1987 amendments.** — Laws 1987, ch. 234, § 43, effective July 1, 1987, substituting "energy, minerals and natural resources department" for "natural resources department" in Subsection I, was approved April 9, 1987. Laws 1987, ch. 245, § 1 purported to amend this section but made no change and was approved April 3. However, Laws 1987, ch. 247, § 5, effective July 1, 1987, also amending this section by adding Subsections J through M, was approved later April 9, 1987. The section was set out as amended by Laws 1987, ch. 247, § 5. See 12-1-8 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 78 Am. Jur. 2d Waters § 2.

## 66-12-4. Operation of unnumbered motorboats prohibited.

A. Every motorboat which is propelled by sail or machinery operating on the waters of this state shall be numbered. No person shall operate or give permission for the operation of any motorboat on the waters of this state unless the motorboat is numbered in accordance with the Boat Act or in accordance with applicable federal law or in accordance with a federally approved numbering system of another state and unless the certificate of number awarded to the motorboat is in force and the identifying number set forth in the certificate of number is displayed on each side of the bow of the motorboat.

B. Every boat operating on the waters of this state and owned by a person who is domiciled in this state shall be titled. No person shall operate or give permission for the operation of any boat on the waters of this state unless the boat is titled as provided in the Boat Act.

C. A person who is not domiciled in this state but who operates a boat on the waters of this state may, pursuant to the provisions of the Boat Act, elect to register the boat in this state.

**History:** 1953 Comp., § 75-35-4, enacted by Laws 1959, ch. 338, § 4; 1963, ch. 45, § 1; 1965, ch. 16, § 2; 1987, ch. 247, § 6; 2000, ch. 34, § 1.

**ANNOTATIONS**

**Cross references.** — For exemptions from numbering provisions of the act, *see* 66-12-8 NMSA 1978.

**The 2000 amendment,** effective May 17, 2000, added Subsection C.

**The 1987 amendment,** effective July 1, 1987, designated the existing provisions as Subsection A, while making a minor stylistic change in the second sentence thereof, and added Subsection B.

## 66-12-5. Identification number.

A. The owner of each motorboat requiring numbering and inspection by this state shall file an application for number with the division on forms approved by it. The application shall be signed by the owner of the motorboat and shall be accompanied by a three year registration fee as required in Section 66-12-5.1 NMSA 1978. Upon receipt of the application in approved form, the division shall file it and issue to the applicant a certificate of number stating the number awarded to the motorboat and the name and address of the owner. The owner shall paint on or attach to each side of the bow of the motorboat the identification number in the manner prescribed by regulations of the division in order that it is clearly visible but in no case less than three inches in height and of a contrasting color to the boat color. The number shall be maintained in legible condition. The certificate of number shall be pocket size and shall be available at all times for inspection on the motorboat for which it is issued whenever the motorboat is in operation.

B. Should the ownership of a motorboat change, prior to operating it on the waters of this state the new owner shall file with the division an application for a new certificate of number in the same manner required for the award of a number under Subsection A of this section.

C. If an agency of the United States has in force an overall system of identification numbering for motorboats within the United States, the numbering system employed by the division pursuant to the Boat Act shall be in conformity with that system.

D. The division may award any certificate of number directly or may authorize any person to act as agent for the awarding. If a person accepts such authorization, he may be assigned a block of numbers and certificates which, upon award in conformity with the Boat Act and with any regulations of the division, are valid as if awarded directly by the division.

E. Every certificate of number awarded pursuant to the Boat Act shall continue in force through December 31 of the third calendar year of registration unless sooner terminated in accordance with the provisions of the Boat Act. A certificate of number may be renewed in the same manner provided for in the initial securing of the certificate and upon payment of the three year registration fee. Each application for renewal of a certificate of number shall be made by the owner on an application form which must be received by the division within sixty days after the expiration date of the certificate.

F. The owner shall notify the division of transfer, destruction or abandonment of the motorboat within fifteen days thereof. The transfer, destruction or abandonment terminates the certificate of number for the motorboat except in the case of a transfer of

a part interest which does not affect the owner's right to operate the motorboat. Whenever the certificate of number is terminated, the owner shall return it to the division within fifteen days and state the reason for termination.

G. If there is a change of address, the holder of a certificate of number shall provide to the division the new address, existing certificate of number and a reasonable administrative fee. Upon receipt, the division will issue a new certificate of number.

H. Only the assigned registration number shall be painted, attached or otherwise displayed on either side of the bow of a motorboat.

I. The registration number assigned to the motorboat shall remain the assigned number for the life of the boat, except when a boat is transferred out of state, destroyed or abandoned.

**History:** 1953 Comp., § 75-35-5, enacted by Laws 1959, ch. 338, § 5; 1963, ch. 45, § 2; 1969, ch. 44, § 1; 1977, ch. 254, § 97; 1983, ch. 41, § 1; 1987, ch. 245, § 2.

**ANNOTATIONS**

**The 1987 amendment,** effective June 19, 1987, in Subsection A, substituted "shall be accompanied by a three year registration fee" for "shall be accompanied by an annual registration fee"; deleted former Subsection B, relating to motorboats already covered by numbers awarded pursuant to federal law or a federally approved numbering system of another state, and redesignated subsequent subsections accordingly; deleted former Subsection F, which read "All records of the division made or kept pursuant to this section are public records" and redesignated subsequent subsections accordingly; in Subsection E, substituted "three year registration fee" for "annual registration and inspection fee" and deleted "and any application not so received shall be treated as an original application for a certificate of number" from the end of the subsection; in Subsection F, deleted "of all or any part of his interest, other than the creation of a security interest, in a motorboat numbered in this state or of the" following "notify the division of transfer" near the beginning and deleted "the transfer does not terminate the certificate of number" from the end of the second sentence, and made minor stylistic changes; deleted former Subsections I and J, relating to notification of the division of address changes and a prohibition of the painting of numbers above the number awarded to the motorboat; and added Subsections G, H, and I.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 12 Am. Jur. 2d Boats and Boating §§ 4, 9, 13, 19, 22.

## 66-12-5.1. Fees.

The division shall establish and impose reasonable registration fees for the purposes of the Boat Act.

**History:** Laws 1983, ch. 41, § 2; 1987, ch. 245, § 3.

**ANNOTATIONS**

**The 1987 amendment,** effective June 19, 1987, substituted the present provisions for the former provisions which specified fees based on boat size and whether or not the boat was registered in its state of principal use.

## 66-12-5.2. Owner's certificate of title; fees; duplicates.

A. Except as provided in Subsection C of this section, every owner of a boat subject to titling under the provisions of the Boat Act shall apply to the division for issuance of a certificate of title for the boat within thirty days after acquisition. The application shall be on forms the division prescribes and accompanied by the required fee. The application shall be signed and sworn to before a notary public or other person who administers oaths, or a certification signed in writing containing substantially the representation that statements made are true and correct to the best of the applicant's knowledge, information and belief, under penalty of perjury. The application shall contain the date of sale and gross price of the boat or the fair market value if no sale immediately preceded the transfer and any additional information the division requires. If the application is made for a boat last previously registered or titled in another state or foreign country, it shall contain this information and any other information the division requires.

B. The division shall not issue or renew a certificate of number to any boat required to be registered and numbered in the state unless the division has issued a certificate of title to the owner, if the boat is required to be titled.

C. Any person who, on July 1, 1987, is the owner of a boat with a valid certificate of number issued by the state is not required to file an application for a certificate of title for the boat until he transfers any part of his interest in the boat or he renews the certificate of number for the boat.

D. If a dealer buys or acquires a used boat for resale, he shall report the acquisition to the division on forms the division provides, or he may apply for and obtain a certificate of title as provided in this section. If a dealer buys or acquires a used unnumbered boat, he shall apply for a certificate of title in his name within thirty days. If a dealer buys or acquires a new boat for resale, he may apply for a certificate of title in his name.

E. Every dealer transferring a boat requiring titling under this section shall assign the title to the new owner or, in the case of a new boat, assign the certificate of origin. Within thirty days, the dealer or purchaser, as applicable, shall file with the division the necessary application and fee required under this section.

F. The division shall maintain a record of any certificate of title it issues.

G. No person shall sell, assign or transfer a boat titled by the state without delivering to the purchaser or transferee a certificate of title with an assignment on it showing title in the purchaser or transferee and with a statement of all liens upon the title. No person may purchase or otherwise acquire a boat required to be titled by the state without obtaining a certificate of title for it in his name.

H. The division shall charge a ten dollar ($10.00) fee to issue a certificate of title, a transfer of title, a duplicate or corrected certificate of title.

I. If a certificate of title is lost, stolen, mutilated, destroyed or becomes illegible, the first lienholder or, if there is none, the owner named in the certificate, as shown by the division's records, shall within thirty days obtain a duplicate by applying to the division. The applicant shall furnish information concerning the original certificate and the circumstances of its loss, mutilation or destruction as the division requires. Mutilated or illegible certificates shall be returned to the division with the application for a duplicate. Issuance of a duplicate certificate of title is not subject to the excise tax imposed under Section 66-12-6.1 NMSA 1978.

J. The duplicate certificate of title shall be plainly marked "duplicate" across its face and mailed or delivered to the applicant.

K. If a lost or stolen original certificate of title for which a duplicate has been issued is recovered, the original shall be surrendered promptly to the division for cancellation.

**History:** Laws 1987, ch. 247, § 7.

## 66-12-5.3. Prohibited acts.

A. It is unlawful for any person to take, receive or transfer a vessel without the consent of the owner.

B. It is unlawful for any person to damage, tamper with, alter or change hull identification numbers or serial numbers.

**History:** Laws 1987, ch. 245, § 4.

**ANNOTATIONS**

**Compiler's notes.** — This section was enacted as 66-12-5.2 NMSA 1978, but was compiled as 66-12-5.3 NMSA 1978 because of the enactment of another 66-12-5.2 NMSA 1978 by Laws 1987, ch. 247, § 7.

## 66-12-6. Dealer and manufacturer numbers; fee; certificates of origin; records.

A. A dealer or manufacturer that demonstrates motorboats on the public waters of this state shall file an application for a dealer or manufacturer number. The number shall be in lieu of a certificate of number for each motorboat intended or offered for sale.

B. Application for a dealer or manufacturer number shall be in the form prescribed by the division. The application shall state that the applicant is a motorboat dealer or manufacturer and that the applicant will operate a motorboat upon the waters of this state only for test or demonstration purposes. The statement shall be verified before a state officer who is authorized to administer an oath. The fee for a dealer or manufacturer number is ten dollars ($10.00) annually as prescribed by the division.

C. The division shall issue a certificate of a dealer or manufacturer number to an applicant who submits a complete application and full payment of the dealer or manufacturer number fee to the division. The certificate shall be issued after the applicant obtains a dealer license from the motor vehicle division of the taxation and revenue department and shall contain the following:

(1) a dealer or manufacturer number that contains two state identification letters, followed by four numbers and two additional letters that are unique to dealers or manufacturers;

(2) the expiration date of the certificate;

(3) the name and business address of the applicant;

(4) the address of the principal place of business of the applicant; and

(5) a conspicuous statement that the division has certified the applicant as a dealer or manufacturer.

D. The dealer or manufacturer number shall be painted on or attached to plates that are firmly attached to each side of the front of a motorboat of the dealer or manufacturer while it is afloat upon the waters of this state.

E. A dealer or manufacturer who operates more than one motorboat for test or demonstration purposes on the waters of this state at the same time shall obtain and display a separate dealer or manufacturer number for each motorboat tested or demonstrated.

F. A manufacturer or dealer shall not transfer ownership of a new boat without supplying the transferee with the manufacturer's certificate of origin signed by the manufacturer's authorized agent. The certificate shall contain information the division requires.

G. Every dealer shall maintain for three years a record of any boat he bought, sold, exchanged or received for sale or exchange. This record shall be open to inspection by division representatives during reasonable business hours.

**History:** 1953 Comp., § 75-35-5.1, enacted by Laws 1965, ch. 48, § 1; 1977, ch. 254, § 98; 1987, ch. 247, § 8; 2003, ch. 410, § 3.

**ANNOTATIONS**

**The 2003 amendment,** effective June 20, 2003, rewrote this section.

**The 1987 amendment,** effective July 1, 1987, made minor stylistic changes in Subsections A and B, and added Subsections C and D.

## 66-12-6.1. Excise tax on issuance of certificates of title; appropriation.

A. An excise tax is imposed upon the sale of every boat required to be registered in the state. To prevent evasion of the excise tax imposed by this section and the duty to collect it, it is presumed that the issuance of every original and subsequent certificate of title, other than a duplicate, for boats of a type required to be registered under the provisions of the Boat Act constitutes a sale for tax purposes unless specifically exempted by this section or unless there is shown satisfactory proof that the boat for which the certificate of title is sought came into the possession of the applicant as a voluntary transfer without consideration or as a transfer by operation of law. The division shall collect the tax at the time application is made for issuance of a certificate of title at the rate of five percent of the sale price of the boat. If the sale price does not represent the value of the boat in the condition that existed at the time it was acquired, the excise tax shall then be imposed at the rate of five percent of the reasonable value of the boat in such condition at such time. However, allowances granted for trade-ins may be deducted from the sale price or the reasonable value of the boat purchased. The tax shall be paid by the applicant, and the division may require all information which it deems necessary to establish the amount of the tax.

B. A penalty of fifty percent of the tax due on the issuance of a certificate of title is imposed on any person who, domiciled in this state and accepting transfer in this state, fails to apply for a certificate within ninety days of the date on which ownership was transferred to him or who is domiciled in this state but accepts transfer outside this state and who fails to apply for a certificate within ninety days of the date on which the boat is brought into this state.

C. If a boat has been acquired through an out-of-state transaction upon which a gross receipts, sales, compensating or similar tax was levied by another state or political subdivision thereof, the amount of the tax paid may be credited against the excise tax due this state on the same boat.

D. Persons domiciled outside this state and on active duty in the military service of the United States or on active duty as officers of the public health service detailed for duty with any branch of the military service are exempt from the tax imposed by this section.

E. Persons who acquire a boat out of state thirty or more days before establishing a domicile in this state are exempt from the tax imposed by this section if the boat was acquired for personal use.

F. Persons applying for a certificate of title for a boat registered in another state are exempt from the tax imposed by this section if they have previously registered and titled the boat in New Mexico and have owned the boat continuously since that time.

G. Certificates of title for all boats owned by this state or any political subdivision are exempt from the tax imposed by this section.

H. All taxes collected under the provisions of this section shall be paid to the state treasurer for credit to the "boat suspense fund", hereby created. At the end of each month, the state treasurer shall transfer fifty percent of the excise tax collections in the boat suspense fund to the division, and the balance to the general fund. The amounts transferred to the division are appropriated for use by the division for improvements and maintenance of lakes and boating facilities owned or leased by the state and for administration and enforcement of the Boat Act.

I. The director shall prescribe forms he deems necessary to account properly for the taxes collected under this section.

**History:** Laws 1987, ch. 247, § 9.

## 66-12-6.2. Security interest in boats; filing; perfection.

A. A security interest in a boat required to be titled and registered in New Mexico is not valid against attaching creditors, subsequent transferees or lienholders unless perfected as provided by this section. This provision does not apply to liens dependent upon possession.

B. All title applications shall be accompanied by the certificate of title last issued for the boat and shall contain the name and address of any lienholder, the date the security agreement was executed and the maturity date of the agreement.

C. Upon receipt of a title application, the division shall enter upon the application the date it was received. When satisfied as to the genuineness of the application, the division shall file it and issue a new certificate of title showing the owner's name and all liens existing against the boat.

D. No security interest filed in any state which does not show all liens on the certificate of title shall be valid against any person in this state other than the parties to the security agreement or those persons who take with actual notice of the agreement.

**History:** Laws 1987, ch. 247, § 10.

## 66-12-6.3. Security interest in boats; filing effective to give notice.

A. The filing of an application with the division and the issuance of a new certificate of title by the division as provided in Section 66-12-5.2 NMSA 1978 constitutes constructive notice of all security interests in the boat described in the application. If the application is received by the division within ten days after the date the security agreement was executed, constructive notice dates from the time of the execution of the security agreement. Otherwise, constructive notice dates from the time of receipt noted on the title application.

B. The method provided in this article for perfecting a security interest shall be exclusive except as to liens dependent upon possession.

C. The constructive notice provided for in this section terminates twelve months after the maturity date of the debt. Unless refiled in a manner prescribed by the division within twelve months after the maturity date, the division may ignore the security interest in the issuance of all subsequent certificates of title.

**History:** Laws 1987, ch. 247, § 11.

## 66-12-6.4. Forms; investigations.

A. The division shall prescribe and provide suitable forms of applications, certificate of title and all other forms necessary to carry out the provisions of this act.

B. The division may make necessary investigations to procure information required to carry out the provisions of the Boat Act.

**History:** Laws 1987, ch. 247, § 12.

**ANNOTATIONS**

## 66-12-6.5. Prohibited display of dealer or manufacturer numbers.

A dealer or manufacturer shall not display a dealer or manufacturer number on a motorboat that is not being operated for test or demonstration purposes.

**History:** Laws 2003, ch. 410, § 4.

**ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 410 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2003, 90 days after adjournment of the legislature.

## 66-12-6.6. Dealer license.

A. A person shall not engage in business as a dealer or manufacturer without obtaining a valid dealer license from the motor vehicle division of the taxation and revenue department, unless the person has a valid motor vehicle dealer license. A dealer or manufacturer shall annually file an application with the motor vehicle division for a dealer license for each established place of business of the dealer or manufacturer.

B. A person shall file an application for a dealer license with the motor vehicle division of the taxation and revenue department on a form prescribed by the motor vehicle division. The application shall contain the name, address and telephone number of the applicant, the signature of the applicant or the signatures of all of the officers of a corporate applicant, the address of the established place of business, the federal taxpayer identification number of the applicant and other information that the motor vehicle division may require. The application shall state that the applicant will engage in business as a dealer. The statement shall be verified before a state officer authorized to administer an oath. The fee for a dealer license shall be prescribed by the motor vehicle division but shall not exceed fifty dollars ($50.00) annually.

C. The motor vehicle division of the taxation and revenue department shall issue a dealer license to an applicant who submits a complete application and full payment of the dealer license fee to the motor vehicle division. The license shall contain the following:

(1) the license number;

(2) the expiration date of the license;

(3) the name and business address of the licensee;

(4) the address of the location for which the license was issued; and

(5) a statement requiring that the license be conspicuously displayed at the location for which the license was issued.

D. A dealer license shall specify the location of each place of business in which the licensee engages in business as a dealer. The dealer shall notify the motor vehicle division of the taxation and revenue department of a change of ownership, location or name of the place of business within ten days of the change.

E. A dealer license shall authorize the licensed activity at only one business establishment. A dealer shall obtain a supplemental license from the motor vehicle division of the taxation and revenue department for each additional establishment owned or operated by the dealer. The application for a supplemental license shall be in a form prescribed by the motor vehicle division. The motor vehicle division shall issue a supplemental license to an applicant who possesses a valid dealer license, submits a complete application and meets all other requirements of the motor vehicle division.

F. A dealer license or supplemental license shall be conspicuously displayed at the location of the established place of business for which it was issued.

**History:** Laws 2003, ch. 410, § 5.

**ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 410 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2003, 90 days after adjournment of the legislature.

## 66-12-6.7. Dealer license denial, suspension and revocation.

The motor vehicle division of the taxation and revenue department may deny, suspend or revoke a dealer license for:

A. a material misrepresentation communicated by a dealer to the motor vehicle division;

B. a lack of fitness as proscribed by rule of the motor vehicle division; or

C. a willful violation of a federal or state law relating to the sale, distribution, financing, registration, taxing or insuring of motorboats.

**History:** Laws 2003, ch. 410, § 6.

**ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 410 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2003, 90 days after adjournment of the legislature.

## 66-12-6.8. Dealer bonds; required insurance.

A person licensed as a dealer pursuant to the Boat Act shall file with the state parks division a bond in the amount of fifty thousand dollars ($50,000) unless there is a bond on file with the motor vehicle division of the taxation and revenue department for a motor vehicle dealer's license and such proof is submitted to the state parks division.

The bond shall be issued by a corporate surety licensed to conduct business within the state. The bond shall be issued under the condition that the applicant shall not practice fraud or violate any provision of the Boat Act. A person who has obtained a dealer license shall furnish evidence that the person has liability insurance for the established place of business for which the license was obtained.

**History:** Laws 2003, ch. 410, § 7.

**ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 410 contained no effective date provision, but, pursuant to N.M. Const.,art. IV, § 23, was effective June 20, 2003, 90 days after adjournment of the legislature.

## 66-12-7. Equipment.

A. Every vessel shall have aboard:

(1) one life preserver, buoyant vest, ring buoy or buoyant cushion bearing the mark of approval of the United States coast guard and in serviceable condition for each person on board;

(2) one oar or paddle;

(3) one bailing bucket with a capacity of at least one gallon, or hand-operated bilge pump; and

(4) a length of stout rope at least equal to the length of the vessel.

B. Every motorboat, during the hours of darkness, shall carry:

(1) a bright white light aft to show around the horizon; and

(2) a combined light on the fore part of the vessel and lower than the white light and showing green to the starboard and red to the port, and so fixed as to throw the light from right ahead to two points abaft the beam on their respective sides. No other light shall be shown except as specifically prescribed by the United States coast guard for the particular class of boats.

C. If carrying or using any inflammable or toxic fluid in any enclosure for any purpose, and if not entirely open, every vessel shall have an efficient natural or mechanical ventilation system capable of removing resulting gases prior to, and during, the time the vessel is occupied by any person.

D. No privately owned vessel shall carry a siren unless specifically authorized in writing by the director of the division.

E. No person shall operate or give permission for the operation of a vessel which is not equipped as required by this section.

**History:** 1953 Comp., § 75-35-6, enacted by Laws 1959, ch. 338, § 6; 1963, ch. 45, § 3; 1977, ch. 254, § 99.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 12 Am. Jur. 2d Boats and Boating §§ 10 to 13.

Validity of regulation of smoke and other air pollution, 78 A.L.R.2d 1313.

Liability under Jones Act or unseaworthiness doctrine for failure to furnish individual safety equipment or to require its use, 91 A.L.R.2d 1019.

## 66-12-7.1. Personal flotation devices required.

The operator of a vessel being used for recreational purposes shall require a child age twelve or under who is aboard the vessel to wear a personal flotation device approved by the United States coast guard while the vessel is underway, unless the child is below deck or in an enclosed cabin.

**History:** Laws 2006, ch. 46, § 2.

**ANNOTATIONS**

**Effective dates.** — Laws 2006, ch. 46, § 3 made Laws 2006, ch. 40, § 2 effective January 1, 2007.

## 66-12-8. Exemptions from numbering provisions of the Boat Act.

A motorboat shall not be required to be numbered under the Boat Act if it is:

A. already covered by a number in force which has been awarded to it pursuant to federal law or a federally approved numbering system of another state; provided that the boat shall not have been within this state for a period in excess of ninety consecutive days;

B. a motorboat from a country other than the United States temporarily using the waters of this state;

C. a motorboat whose owner is the United States, a state or a subdivision thereof;

D. a ship's lifeboat; or

E. a motorboat belonging to a class of boats which has been exempted from numbering by the division after it has found that the numbering of motorboats of that class will not materially aid in their identification; and, if an agency of the federal government has a numbering system applicable to the class of motorboats to which the motorboat in question belongs, after the division has further found that the motorboat would also be exempt from numbering if it were subject to the federal law.

**History:** 1953 Comp., § 75-35-7, enacted by Laws 1959, ch. 338, § 7; 1977, ch. 254, § 100.

## 66-12-9. Boat liveries.

A. The owner of a boat livery shall cause to be kept a record of the name and address of the person or persons hiring any vessel which is designed or permitted by him to be operated as a motorboat, the identification number thereof, and the departure date and time, and the expected time of return. The record shall be preserved for at least six months.

B. Neither the owner of a boat livery, nor his agent or employee shall permit any motorboat or any vessel designed or permitted by him to be operated as a motorboat to depart from his premises unless it shall have been provided with the equipment required pursuant to Section 66-12-7 NMSA 1978, and any rules and regulations made pursuant thereto by the division.

**History:** 1953 Comp., § 75-35-8, enacted by Laws 1959, ch. 338, § 8; 1977, ch. 254, § 101.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 12 Am. Jur. 2d Boats and Boating §§ 27, 81, 82, 86, 88.

## 66-12-10. Muffling devices.

The exhaust of every internal combustion engine used on any motorboat shall be effectively muffled by equipment so constructed and used as to muffle the noise of the exhaust in a reasonable manner. This may include but is not limited to such devices as mufflers, exhaust restricters and water-injected exhaust headers. The use of cut-outs or non-muffled headers is prohibited except for motorboats competing in a regatta or boat race approved as provided in Section 66-2-15 NMSA 1978 and for such motorboats while on trial runs during a period not to exceed forty-eight hours immediately preceding the regatta or race and for such motorboats while competing in official trials for speed records during a period not to exceed forty-eight hours immediately following the regatta or race.

**History:** 1953 Comp., § 75-35-9, enacted by Laws 1959, ch. 338, § 9; 1991, ch. 240, § 2.

**ANNOTATIONS**

**The 1991 amendment,** effective June 14, 1991, added the second sentence and, in the third sentence, inserted "or non-muffled headers" and substituted "Section 66-2-15 NMSA 1978" for "Section 14 of the Boat Act".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 12 Am. Jur. 2d Boats and Boating § 12.

Public regulation requiring mufflers or similar noise preventing devices on motor vehicles, aircrafts or boats, 49 A.L.R.2d 1202.

## 66-12-11. Prohibited operation.

A. A person shall not operate any motorboat or vessel or manipulate any water skis, surfboard or similar device in a reckless or negligent manner so as to endanger the life or property of any person.

B. A person shall not operate any vessel, not defined as a motorboat pursuant to the provisions of the Boating While Intoxicated Act [66-13-1 to 66-13-13 NMSA 1978], or manipulate any water skis, surfboard or similar device while intoxicated or under the influence of any narcotic drug, barbiturate or marijuana.

**History:** 1953 Comp., § 75-35-10, enacted by Laws 1959, ch. 338, § 10; 1987, ch. 245, § 5; 1991, ch. 240, § 3; 2003, ch. 241, § 15.

**ANNOTATIONS**

**Cross references.** — For driving under the influence of intoxicating drugs or liquor, *see* 66-8-102 NMSA 1978.

For reckless driving, *see* 66-8-113 NMSA 1978.

For hunting or boating while intoxicated or under the influence of narcotic drugs, *see* 17-2-29 NMSA 1978.

**The 2003 amendment,** effective July 1, 2003, in Subsection B, deleted "motorboat or" preceding "vessel" and inserted "not defined as a motorboat pursuant to the provisions of the Boating While Intoxicated Act".

**The 1991 amendment,** effective June 14, 1991, purported to amend this section but made no changes.

**The 1987 amendment** purported to amend this section but made no change.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 12 Am. Jur. 2d Boats and Boating §§ 2, 15 to 17, 19, 33, 37, 39 to 41, 43 to 47, 49, 64, 66, 72, 75, 78, 80.

Liability of owner of powerboat for injury or death allegedly caused by one permitted to operate boat by owner, 71 A.L.R.3d 1018.

Liability of owner or operator of powered pleasure boat for injuries to swimmer or bather struck by boat, 98 A.L.R.3d 1127.

Criminal liability for injury or death caused by operation of pleasure boat, 8 A.L.R.4th 886.

Liability for injuries to, or death of, water-skiers, 34 A.L.R.5th 77.

Validity, construction and application of statute prohibiting boating while intoxicated, boating while under the influence, or the like, 47 A.L.R.6th 107.

## 66-12-12. Collisions; assistance and reports.

A. The operator of a vessel involved in a collision, accident or other casualty, so far as he can do so without serious danger to his own vessel, crew and passengers, shall:

(1) render to other persons affected by the collision, accident or other casualty such assistance as practicable and necessary in order to save them from, or minimize, any danger caused by the collision, accident or other casualty; and

(2) give his name, address and identification of his vessel in writing to any person injured and to the owner of any property damaged in the collision, accident or other casualty.

B. In case of collision, accident or other casualty involving a vessel, and resulting in death or injury to a person or damage to property in excess of one hundred dollars ($100), the operator of the vessel or his legal representative shall, within forty-eight hours, file with the division a full description of the collision, accident or other casualty, including all information that the division may require by regulation.

C. All collision, accident or other casualty reports filed as required by this section shall be without prejudice to the individual making the report, and are solely for the confidential use of the division except that the division may disclose the identity of a person involved in an accident when the identity is not otherwise known or when the person denies his presence at the accident. The report is inadmissible as evidence in any trial, civil or criminal, arising out of an accident, except that the division may furnish, upon request, a certificate showing that a specified accident report has or has not been made as required by this section.

**History:** 1953 Comp., § 75-35-11, enacted by Laws 1959, ch. 338, § 11; 1963, ch. 45, § 4; 1977, ch. 254, § 102.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Criminal liability for injury or death caused by operation of pleasure boat, 8 A.L.R.4th 886.

Liability in admiralty for collision between vessel and drawbridge structure, 134 A.L.R. Fed. 537.

## 66-12-13. Transmittal of information.

In accordance with any request duly made by an authorized official or agency of the United States, any information compiled or otherwise available to the division pursuant to Section 66-12-12B NMSA 1978 shall be transmitted to the official or agency of the United States.

**History:** 1953 Comp., § 75-35-12, enacted by Laws 1959, ch. 338, § 12; 1977, ch. 254, § 103.

## 66-12-14. Water skis and surfboards.

A. No person shall operate a vessel on any waters of this state for towing a person on water skis, a surfboard or similar device unless there is in the vessel a person in addition to the operator or a device capable of letting the oprator [operator] have an unobstructed view of the person or object being towed. All skiers must wear ski belts or jackets.

B. No person shall operate a vessel on any waters of this state, towing a person on water skis, a surfboard or similar device, nor shall any person engage in water skiing, surfboarding or similar activity, at any time between the hours from one hour after sunset to one hour before sunrise.

C. The provisions of Subsections A and B of this section do not apply to a performer engaged in a professional exhibition or to a person engaged in an activity authorized under Section 66-12-15 NMSA 1978.

D. No person shall negligently operate or manipulate any vessel, tow rope or other device by which the direction or location of water skis, a surfboard or similar device may be affected or controlled, in such a way as to cause the water skis, surfboard or similar device, or any person thereon, to strike any object or person.

**History:** 1953 Comp., § 75-35-13, enacted by Laws 1959, ch. 338, § 13; 1963, ch. 45, § 5.

## 66-12-15. Regattas; races; marine parades; tournaments or exhibitions.

A. The division may authorize the holding of regattas, motorboat or other boat races, marine parades, tournaments or exhibitions on any waters of this state. It shall adopt and may, from time to time, amend regulations concerning the safety of motorboats and other vessels and persons thereon, either observers or participants. Whenever a regatta, motorboat or other boat race, marine parade, tournament or exhibition is proposed to be held, the person in charge thereof shall, at least thirty days prior thereto, file an application with the division to hold the regatta, motorboat or other boat race, marine parade, tournament or exhibition. The application shall set forth the date, time and location where it is proposed to hold the regatta, motorboat or other boat race, marine parade, tournament or exhibition, and it shall not be conducted without authorization of the division in writing.

B. The provisions of this section shall not exempt any person from compliance with applicable federal law or regulation, but nothing contained herein shall be construed to require the securing of a state permit pursuant to this section if a permit therefor has been obtained from an authorized agency of the United States.

**History:** 1953 Comp., § 75-35-14, enacted by Laws 1959, ch. 338, § 14; 1977, ch. 254, § 104.

**ANNOTATIONS**

**Cross references.** — For motorboats competing in regattas or races being exempt from muffling device requirements, *see* 66-12-10 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 12 Am. Jur. 2d Boats and Boating §§ 11, 30, 31, 66.

Water sports, amusements, or exhibitions as nuisance, 80 A.L.R.2d 1124.

Liability for injury or death of nonparticipant caused by water skiing, 67 A.L.R.3d 1218.

Validity, construction, and application of state or local enactments regulating parades, 80 A.L.R.5th 255.

## 66-12-16. Local regulations; restrictions; special rules and regulations.

A. The provisions of the Boat Act and of other applicable laws of this state shall govern the operation, equipment, numbering and all other matters relating thereto whenever any vessel shall be operated on the waters of this state, or when any activity regulated by the Boat Act shall take place thereon, but nothing in the Boat Act shall be

construed to prevent the adoption of any ordinance or local law relating to the operation and equipment of vessels where the provisions of the ordinance or local law are identical to the provisions of the Boat Act, amendments thereto, or regulations issued thereunder; provided that the ordinance or local law shall be operative only so long as, and to the extent that, they continue to be identical to the provisions of the Boat Act, amendments thereto, or regulations issued thereunder.

B. Any subdivision of this state may, at any time, but only after public notice, make formal application to the division for special rules and regulations with reference to the operation of vessels on any waters within its territorial limits and shall set forth therein the reasons which make the special rules or regulations necessary or appropriate.

C. The division is authorized to make special rules and regulations with reference to the operation of vessels on any waters within the territorial limits of any subdivision of this state.

**History:** 1953 Comp., § 75-35-15, enacted by Laws 1959, ch. 338, § 15; 1977, ch. 254, § 105.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Water sports, amusements, or exhibitions as nuisance, 80 A.L.R.2d 1124.

## 66-12-17. Owner's civil liability.

The owner of a vessel shall be liable for any injury or damage occasioned by the negligent operation of the vessel, whether the negligence consists of a violation of the provisions of the statutes of this state, or neglecting to observe the ordinary care and operation that the rules of the common law require. The owner shall not be liable unless the vessel is being used with his express or implied consent. It shall be presumed that the vessel is being operated with the knowledge and consent of the owner, if at any time of the injury or damage, it is under the control of the spouse, father, mother, brother, sister, son, daughter, or other immediate member of the owner's family. Nothing contained herein shall be construed to relieve any other person from any liability which he would otherwise have, but nothing contained herein shall be construed to authorize or permit any recovery in excess of injury or damage actually incurred.

**History:** 1953 Comp., § 75-35-16, enacted by Laws 1959, ch. 338, § 16.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 12 Am. Jur. 2d Boats and Boating §§ 32 to 88.

Liability of owner or operator of motorboat for injury or damage, 63 A.L.R.2d 343, 71 A.L.R.3d 1018, 98 A.L.R.3d 1127.

Liability of owner or operator of powered pleasure boat for injuries to swimmer or bather struck by boat, 98 A.L.R.3d 1127.

Criminal liability for injury or death caused by operation of pleasure boat, 8 A.L.R.4th 886.

Admiralty jurisdiction: maritime nature of tort - modern cases, 80 A.L.R. Fed. 105.

## 66-12-18. Power to regulate.

The state park and recreation division [state parks division] may promulgate regulations to carry into effect the provisions of the Boat Act.

**History:** 1953 Comp., § 75-35-17, enacted by Laws 1959, ch. 338, § 17; 1963, ch. 45, § 6; 1977, ch. 254, § 106.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not a part of the law.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 12 Am. Jur. 2d Boats and Boating §§ 4 to 22.

## 66-12-18.1. Safe boating rules.

The division shall adopt safe boating education rules that require that:

A. a person born after January 1, 1989 who operates a motorboat on the waters of this state shall:

(1) have completed a safe boating education course that is approved by the national association of state boating law administrators and certified by the division or passed an equivalency examination that was proctored and that tested the knowledge of information included in the curriculum of the course and have received a certificate of completion of the certified course or passage of the equivalency examination;

(2) possess a valid license to operate a vessel issued for maritime personnel by the United States coast guard pursuant to 46 CFR Part 10 or a marine certificate issued by the Canadian government; or

(3) have received, as an authorized operator of a rented or leased motorboat, instructions regarding the safe operation of the motorboat and a summary of the

statutes and rules governing the operation of a motorboat from a person in the business of renting or leasing motorboats. The instructions shall be valid only for the period of the rental agreement not to exceed thirty days; and

B. a person in the business of renting or leasing motorboats for a period not exceeding thirty days shall:

(1) not rent or lease a motorboat to a person for operation on the waters of this state unless the person meets the provisions of Subsection A of this section;

(2) maintain rental or lease records that include the name and age of each person who is authorized to operate the rented or leased motorboat; and

(3) provide each authorized operator of a rented or leased motorboat with instructions regarding the safe operation of the motorboat and a summary of the statutes and regulations governing the operation of a motorboat.

**History:** Laws 2006, ch. 46, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2006, ch. 46, § 3 made Laws 2006, ch. 46, § 1 effective January 1, 2007.

## 66-12-19. Filing of regulations.

Regulations adopted by the state park and recreation division [state parks division] pursuant to the Boat Act shall be filed as provided by law.

**History:** 1953 Comp., § 75-35-18, enacted by Laws 1959, ch. 338, § 18; 1963, ch. 45, § 7; 1977, ch. 254, § 107.

**ANNOTATIONS**

**Cross references.** — For filing of agency rules with the records center, *see* 14-4-3 NMSA 1978.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not a part of the law.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 12 Am. Jur. 2d Boats and Boating §§ 19, 28, 68.

## 66-12-20. Disposition of fees.

The fees collected pursuant to the provisions of the Boat Act, less the administrative fee withheld pursuant to Section 1 [7-1-6.41 NMSA 1978] of this 1997 act, shall be covered [deposited] into the state park and recreation fund.

**History:** 1953 Comp., § 75-35-19, enacted by Laws 1959, ch. 338, § 19; 1983, ch. 41, § 3; 1997, ch. 125, § 10.

**ANNOTATIONS**

**Bracketed material.** — The bracketed word "deposited" was inserted by the compiler as the apparently intended term; it was not enacted by the legislature and is not a part of the law.

**Compiler's notes.** — The phrase "this 1997 act" refers to Laws 1997, ch. 125, which amended this section.

**The 1997 amendment,** effective July 1, 1997, substituted "pursuant to" for "under" and inserted "less the administrative fee withheld pursuant to Section 1 of this 1997 act".

## 66-12-21. Disposition of fines.

All money collected as fines for the violation of the provisions of the Boat Act, and regulations of the state park and recreation division [state parks division] made pursuant thereto, shall be paid for credit to the current school fund of the state.

**History:** 1953 Comp., § 75-35-20, enacted by Laws 1959, ch. 338, § 20; 1965, ch. 102, § 1; 1977, ch. 254, § 108.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not a part of the law.

## 66-12-22. Enforcement.

The director, park custodians and other employees of the division designated in writing by the director, every sheriff in his respective county and every member of the state police has [have] full authority of a peace officer to enforce the provisions of the Boat Act and the regulations issued pursuant thereto, and in its exercise may stop and board any vessel subject to the Boat Act.

**History:** 1953 Comp., § 75-35-21, enacted by Laws 1959, ch. 338, § 21; 1963, ch. 45, § 8; 1977, ch. 254, § 109.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not a part of the law.

## 66-12-23. Penalties.

A. Except for penalty provisions provided in Subsections B through M of this section, a person who violates a provision of the Boat Act or a rule of the division promulgated pursuant to that act is guilty of a petty misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

B. As used in Chapter 66, Article 12 NMSA 1978, "penalty assessment misdemeanor" means a violation of Section 66-12-6.5, 66-12-7, 66-12-7.1, 66-12-10 or 66-12-14 NMSA 1978 or a rule of the division promulgated pursuant to those sections.

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

D. Whenever a person is arrested for violation of a penalty assessment misdemeanor, the arresting officer shall advise the person of the option either to accept the penalty assessment and pay it to the court or to appear in court. The arresting officer, using a uniform non-traffic citation, shall complete the information section, prepare the penalty assessment and prepare a notice to appear in court specifying the time and place to appear. 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 of payment of any penalty assessment.

E. The arresting officer may issue a warning notice, but shall fill in the information section of the citation and give a copy to the arrested person after requiring a 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 Subsection M of this section.

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

G. The magistrate court or metropolitan court in the county where the alleged violation occurred has jurisdiction for any case arising from a penalty assessment misdemeanor.

H. A penalty assessment citation issued by a law enforcement officer shall be submitted to the appropriate magistrate or metropolitan court within three business days of issuance. If the citation is not submitted within three business days, it may be dismissed with prejudice.

I. It is a misdemeanor for any person to violate a written promise to pay the penalty assessment or to appear in court given to an officer upon issuance of a citation regardless of the disposition of the charge for which the citation was issued.

J. A 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.

K. A written promise to appear in court may be complied with by appearance of counsel.

L. When an alleged violator of a penalty assessment misdemeanor elects to appear in court rather than to pay the penalty assessment to the court, no fine imposed upon later conviction shall exceed the penalty assessment established for the particular penalty assessment misdemeanor.

M. The penalty assessment for a first penalty assessment misdemeanor is thirty dollars ($30.00). This penalty assessment is in addition to any magistrate or metropolitan court costs as provided in Subsection B of Section 35-6-4 NMSA 1978. Upon a second conviction or acceptance of a notice of penalty assessment for a penalty assessment misdemeanor, the penalty assessment shall be fifty dollars ($50.00). Upon a third or subsequent conviction or acceptance of a notice of penalty assessment, the penalty assessment shall be one hundred fifty dollars ($150).

**History:** 1953 Comp., § 75-35-22, enacted by Laws 1963, ch. 45, § 9; 1983, ch. 41, § 4; 1987, ch. 234, § 44; 2004, ch. 76, § 1; 2013, ch. 136, § 3; 2018, ch. 74, § 55.

## ANNOTATIONS

**The 2018 amendment,** effective July 1, 2018, adjusted fines for certain violations of the Boat Act, and made technical changes; in Subsection B, after "Section", added "66-12-6.5"; in Subsection G, after "penalty assessment misdemeanor", deleted "issued for violation of Section 66-12-7, 66-12-7.1, 66-12-10 or 66-12-14 NMSA 1978 or a rule of the division promulgated pursuant to those sections"; and in Subsection M, after "assessment for a first", deleted "violation of Section 66-12-7, 66-12-7.1, 66-12-10 or 66-12-14 NMSA 1978 or any rule of the division promulgated pursuant to those sections" and added "penalty assessment misdemeanor", and after "notice of penalty assessment for", deleted "violation of Section 66-12-7, 66-12-7.1, 66-12-10 or 66-12-14 NMSA 1978 or any rule of the division promulgated pursuant to those sections" and added "a penalty assessment misdemeanor".

**The 2013 amendment,** effective June 14, 2013, provided a penalty; in Subsection A, at the beginning of the sentence, added "Except for penalty provisions provided in Subsections B through M of this section" and after "Boat Act or a", deleted "regulation" and added "rule"; and added Subsections B through M.

**The 2004 amendment,** effective July 1, 2004, changed the penalty from a misdemeanor to a petty misdemeanor to be sentenced pursuant to Section 31-19-17 NMSA 1978.

**The 1987 amendment,** effective July 1, 1987, substituted "energy, minerals and natural resources department" for "natural resources department" in the middle of the section.

## 66-12-24. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 2004, ch. 76, § 2 repealed Section 66-12-24 NMSA 1978, as enacted by Laws 2003, ch. 410, § 8, concerning the penalty for a Boat Act violation, effective July 1, 2004. For provisions of former section, *see* the 2003 NMSA 1978 on *NMOneSource.com.*

# ARTICLE 13
# Boating While Intoxicated

## 66-13-1. Short title.

Sections 1 through 13 [66-13-1 to 66-13-13 NMSA 1978] of this act may be cited as the "Boating While Intoxicated Act".

**History:** Laws 2003, ch. 241, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 241, § 16 made the act effective July 1, 2003.

## 66-13-2. Definitions.

As used in the Boating While Intoxicated Act:

A. "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;

B. "conviction" means an adjudication of guilt and does not include imposition of a sentence;

C. "motorboat" means any boat, personal watercraft or other type of vessel propelled by machinery, whether or not machinery is the principle source of propulsion. "Motorboat" includes a vessel propelled or designed to be propelled by a sail, but does

not include a sailboard or a windsurf board. "Motorboat" does not include a houseboat or any other vessel that is moored on the water, but not moving on the water; and

D. "operate" means to physically handle the controls of a motorboat that is moving on the water.

**History:** Laws 2003, ch. 241, § 2.

**ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 241, § 16 made the act effective July 1, 2003.

## 66-13-3. Operating a motorboat while under the influence of intoxicating liquor or drugs.

A. It is unlawful for a person who is under the influence of intoxicating liquor to operate a motorboat.

B. It is unlawful for a person who is under the influence of any drug to a degree that renders him incapable of safely operating a motorboat to operate a motorboat.

C. It is unlawful for a person who has an alcohol concentration of eight one hundredths or more in his blood or breath to operate a motorboat.

D. Aggravated boating 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 operating a motorboat;

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

(3) refused to submit to chemical testing, as provided for in the Boating While Intoxicated 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 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. The offender shall be ordered by the court to attend a boating safety course approved by the national association of state boating law administrators. An offender ordered by the court to attend a boating safety course shall provide the court with proof that the offender successfully completed the course within seven months of his conviction or

prior to completion of his probation, whichever period of time is less. In addition to those penalties, when an offender commits aggravated boating while under the influence of intoxicating liquor or drugs, the offender shall be sentenced to not less than forty-eight consecutive hours in jail and may be fined not more than seven hundred fifty dollars ($750). On a first conviction under 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 subsequent 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 seven hundred fifty dollars ($750), or both; provided that if the sentence is suspended in whole or in part, the period of probation shall not exceed one year. In addition to those penalties, when an offender commits aggravated boating while under the influence of intoxicating liquor or drugs, the offender shall be sentenced to not less than forty-eight consecutive hours in jail and may be fined not more than one thousand dollars ($1,000).

**History:** Laws 2003, ch. 241, § 3.

**ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 241, § 16 made the act effective July 1, 2003.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Validity, construction and application of statute prohibiting boating while intoxicated, boating while under the influence, or the like, 47 A.L.R.6th 107.

## 66-13-4. Guilty pleas; limitations.

When a complaint or information alleges a violation of Section 3 [66-13-3 NMSA 1978] of the Boating While Intoxicated Act, any plea of guilty thereafter entered in satisfaction of the charges shall include at least a plea of guilty to the violation of one of the subsections of Section 3 of that act, and no other disposition by plea of guilty to any other charge in satisfaction of the charge shall be authorized if the results of a test performed pursuant to that act disclose that the blood or breath of the person charged contains an alcohol concentration of eight one hundredths or more.

**History:** Laws 2003, ch. 241, § 4.

**ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 241, § 16 made the act effective July 1, 2003.

## 66-13-5. Municipal and county ordinances; unlawful alcohol concentration level for boating while under the influence of intoxicating liquor or drugs.

No municipal or county ordinance prohibiting the operation of a motorboat while under the influence of intoxicating liquor or drugs shall be enacted that provides for an unlawful alcohol concentration level that is different than the alcohol concentration levels provided in Section 3 [66-13-3 NMSA] of the Boating While Intoxicated Act.

**History:** Laws 2003, ch. 241, § 5.

**ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 241, § 16 made the act effective July 1, 2003.

## 66-13-6. Blood-alcohol tests; persons qualified to perform tests; relief from civil and criminal liability.

Only a physician, licensed professional or practical nurse or laboratory technician or technologist employed by a hospital or physician shall withdraw blood from a person in the performance of a blood-alcohol or drug test. A physician, nurse, technician or technologist who withdraws blood from a person in the performance of a blood-alcohol or drug test that has been directed by a law enforcement officer, or by a judicial or probation officer, shall not be held liable in a civil or criminal action for assault, battery, false imprisonment or any conduct of a law enforcement officer, except for negligence, nor shall a person assisting in the performance of the test, or a hospital wherein blood is withdrawn in the performance of the test, be subject to civil or criminal liability for assault, battery, false imprisonment or any conduct of a law enforcement officer, except for negligence.

**History:** Laws 2003, ch. 241, § 6.

**ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 241, § 16 made the act effective July 1, 2003.

## 66-13-7. Blood-alcohol test; law enforcement, judicial or probation officer unauthorized to make arrest or direct test except in performance of official duties authorized by law.

Nothing in the Boating While Intoxicated Act is intended to authorize a law enforcement officer, or a judicial or probation officer, to make an arrest or direct the performance of a blood-alcohol or drug test, except in the performance of his official duties or as otherwise authorized by law.

**History:** Laws 2003, ch. 241, § 7.

**ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 241, § 16 made the act effective July 1, 2003.

## 66-13-8. Implied consent to submit to chemical test.

A. A person who operates a motorboat within this state shall be deemed to have given consent, subject to the provisions of the Boating While Intoxicated Act, to chemical tests of his blood or breath or both, approved by the scientific laboratory division of the department of health pursuant to the provisions of Section 24-1-22 NMSA 1978 as determined by a law enforcement officer, or for the purposes of determining the drug or alcohol content of his blood if arrested for any offense arising out of acts alleged to have been committed while the person was operating a motorboat while under the influence of an intoxicating liquor or drug.

B. The arrested person shall be advised by a law enforcement officer that failure to submit to a chemical test may be introduced into evidence in court and that the court, upon conviction, may impose increased penalties for the person's failure to submit to a chemical test.

C. A test of blood or breath or both, approved by the scientific laboratory division of the department of health pursuant to the provisions of Section 24-1-22 NMSA 1978, shall be administered at the direction of a law enforcement officer having reasonable grounds to believe the person to have been operating a motorboat while under the influence of an intoxicating liquor or drug.

D. A person who operates a motorboat in this state and who is involved in a fatal boating incident shall be deemed to have given consent, subject to the provisions of the Boating While Intoxicated Act, to mandatory chemical tests of his blood or breath or both, as determined by a law enforcement officer and approved by the scientific laboratory division of the department of health pursuant to the provisions of Section 24-1-22 NMSA 1978.

**History:** Laws 2003, ch. 241, § 8.

**ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 241, § 16 made the act effective July 1, 2003.

## 66-13-9. Consent of person incapable of refusal not withdrawn.

A person who is dead, unconscious or otherwise in a condition rendering him incapable of refusal shall be deemed not to have withdrawn the consent provided by the

Boating While Intoxicated Act, and the test designated by the law enforcement officer may be administered.

**History:** Laws 2003, ch. 241, § 9.

**ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 241, § 16 made the act effective July 1, 2003.

## 66-13-10. Administration of chemical test; payment of costs; additional tests.

A. Only the persons authorized by the Boating While Intoxicated Act shall withdraw blood from a person for the purpose of determining its alcohol or drug content. This limitation does not apply to the taking of samples of breath.

B. The person tested shall be advised by the law enforcement officer of the person's right to be given an opportunity to arrange for a physician, licensed professional or practical nurse or laboratory technician or technologist who is employed by a hospital or physician of his own choosing to perform a chemical test in addition to a test performed at the direction of a law enforcement officer.

C. Upon the request of the person tested, full information concerning the test performed at the direction of the law enforcement officer shall be made available to him as soon as it is available from the person performing the test.

D. The agency represented by the law enforcement officer at whose direction the chemical test is performed shall pay for the chemical test.

E. If a person exercises his right under Subsection B of this section to have a chemical test performed upon him by a person of his own choosing, the cost of that test shall be paid by the agency represented by the law enforcement officer at whose direction a chemical test was administered pursuant to Section 8 [66-13-8 NMSA 1978] of the Boating While Intoxicated Act.

**History:** Laws 2003, ch. 241, § 10.

**ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 241, § 16 made the act effective July 1, 2003.

## 66-13-11. Use of tests in criminal or civil actions; levels of intoxication; mandatory charging.

A. The results of a test performed pursuant to the Boating While Intoxicated Act may be introduced into evidence in a civil action or criminal action arising out of the acts alleged to have been committed by the person tested for operating a motorboat while under the influence of intoxicating liquor or drugs.

B. When the blood or breath of the person tested contains:

(1) an alcohol concentration of five one hundredths or less, it shall be presumed that the person was not under the influence of intoxicating liquor; or

(2) an alcohol concentration of more than five one hundredths but less than eight one hundredths, no presumption shall be made that the person either was or was not under the influence of intoxicating liquor. However, the amount of alcohol in the person's blood or breath may be considered with other competent evidence in determining whether the person was under the influence of intoxicating liquor.

C. When the blood or breath of the person tested contains an alcohol concentration of eight one hundredths or more, the arresting officer shall charge him with a violation of Section 3 [66-13-3 NMSA 1978] of the Boating While Intoxicated Act.

D. The determination of alcohol concentration shall be based on the grams of alcohol in one hundred milliliters of blood or the grams of alcohol in two hundred ten liters of breath.

E. The alcohol concentration in a person's blood or breath shall be determined by a chemical test administered to the person within three hours of the alleged boating while under the influence of intoxicating liquor. In a prosecution pursuant to the provisions of the Boating While Intoxicated Act, it is a rebuttable presumption that a person is in violation of the provisions of that act if he has an alcohol concentration of eight one hundredths or more in his blood or breath as determined by a chemical test administered to the person within three hours of the alleged boating while under the influence of intoxicating liquor. If the chemical test is administered more than three hours after the alleged boating while under the influence of intoxicating liquor, the test result is admissible as evidence of the alcohol concentration in the person's blood or breath at the time of the alleged boating and the trier of fact shall determine what weight to give the test result.

F. The presumptions in Subsection B of this section do not limit the introduction of other competent evidence concerning whether the person was under the influence of intoxicating liquor.

G. If a person is convicted of operating a motorboat while under the influence of intoxicating liquor or drugs, the trial judge shall be required to inquire into past convictions of the person for operating a motorboat while under the influence of intoxicating liquor or drugs before sentence is entered in the matter.

**History:** Laws 2003, ch. 241, § 11.

**ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 241, § 16 made the act effective July 1, 2003.

## 66-13-12. Motorboats; influence of intoxicating liquor or drugs; fee upon conviction.

A. A person convicted of a violation of the Boating While Intoxicated Act shall be assessed by the court, in addition to any other fee or fine, a fee of sixty-five dollars ($65.00) to defray the costs of chemical and other tests used to determine the influence of intoxicating liquor or drugs.

B. All fees collected pursuant to the provisions of this section shall be transmitted monthly to the crime laboratory fund. All balances in the crime laboratory fund collected pursuant to this section are appropriated to the administrative office of the courts for payment upon invoice to the scientific laboratory division of the department of health for the costs of chemical and other tests used to determine the influence of intoxicating liquor or drugs.

C. Payment of funds out of the crime laboratory fund of fees collected pursuant to this section shall be made upon vouchers issued and signed by the director of the administrative office of the courts upon warrants drawn by the department of finance and administration.

**History:** Laws 2003, ch. 241, § 12.

**ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 241, § 16 made the act effective July 1, 2003.

## 66-13-13. Educational program.

The state parks division of the energy, minerals and natural resources department shall develop and implement a program to advertise and further educate the boating public about the dangers of boating while under the influence of alcohol or drugs and the penalties associated with a conviction pursuant to the provisions of the Boating While Intoxicated Act.

**History:** Laws 2003, ch. 241, § 13.

**ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 241, § 16 made the act effective July 1, 2003.