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

Motor Vehicle Code. - Section 66-7-102.1 NMSA 1978 was not enacted as part of the Motor Vehicle Code but is included in that code as a convenience to the user.

Constitutionality. - The former Motor Vehicle Act was not constitutionally objectionable under N.M. Const., art. IV, § 16, in that it assertedly contained more than one subject. Its subject was motor vehicles. The mere inclusion of other provisions logically within the scope of the title and relating to the general subject did not violate the "one subject" restriction. This constitutional limitation was designed for the exclusion of discordant provisions having no rational or logical relation to each other. State v. Roybal, 66 N.M. 416, 349 P.2d 332 (1960).

Failure to apply older similar provision as harmless error. - Where the supreme court inadvertently overlooks the fact that a new statute on registration of lien interests in motor vehicles had not gone into effect at the time the decision was made, but there existed at the time a substantially similar statute, the failure to apply the latter constitutes harmless error and is not valid grounds for rehearing. Fulwiler v. Traders & Gen. Ins. Co., 59 N.M. 366, 285 P.2d 140 (1955).

Incorporated municipalities are given express power to adopt traffic codes merely by reference to the proper title and date of the code on the same subject, provided that the entire code so adopted is made available for inspection in at least one place within the municipality, and provided that a copy of the code is made available upon request. 1959-60 Op. Att'y Gen. No. 60-218.

Municipalities may adopt motor vehicle ordinances notwithstanding state statutes cover the same subjects and provide penalties for violations. 1959-60 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 [66-1-1 NMSA 1978] 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 [66-1-1 NMSA 1978].

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 [66-1-1 NMSA 1978]. 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

I. General Consideration.
II. Automobile.
III. Dealer.
IV. Driver.
V. Lien.
VI. Motor Vehicle.
VII. Owner.
VIII. Person.
IX. School Bus.
X. Special Mobile Equipment.
XI. Vehicle.

I. GENERAL CONSIDERATION.

Cross references. - For definitions with respect to traffic violations, see 66-1-4 to 66-1-4.20 NMSA 1978.

For the definition of "snowmobile" and modification as basis for classification as motor vehicle, see 66-9-2 and 66-9-10 NMSA 1978.

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).

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 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 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.

Construction of former definition of "mobile homes". See 1971 Op. Att'y Gen. No. 71-87; S & S Sales, Inc. v. Bureau of Revenue, 88 N.M. 649, 545 P.2d 1027 (Ct. App. 1976); Lewallen v. Elmore Mobile Homes, Inc., 89 N.M. 323, 551 P.2d 1370 (Ct. App. 1976).

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 this section and is similarly excluded from coverage under the Motor Vehicle Dealers Franchising Act, 57-16-1 NMSA 1978 et seq. Smith Mach. Corp. v. Hesston, Inc., 102 N.M. 245, 694 P.2d 501 (1985).

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

Motorcycle as within contract, statute or ordinance in relation to motor cars, motor-driven cars, etc., 48 A.L.R. 1090, 70 A.L.R. 1253.

Airplane as within terms "vehicle," "motor vehicle," etc., 165 A.L.R. 916.

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.

II. AUTOMOBILE.

Freight trailer. - There is no right to a storage lien on a freight trailer, as a freight trailer separated from a truck tractor is not an "automobile" under the Motor Vehicle Code. Newman v. Basis Motor Co., 98 N.M. 39, 644 P.2d 553 (Ct. App. 1982).

III. DEALER.

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.

IV. DRIVER.

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. For instance, a car stopped at an intersection waiting for the traffic signal to change would be in operation and under the physical control of the person handling the controls. Or a car may be at rest after a collision, or a disabled car might be towed while being steered and within the physical control of the person steering the towed vehicle. The primary test, which might vary with different facts, 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. 1953-54 Op. Att'y Gen. No. 5858.

V. LIEN.

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, 72 N.M. 17, 380 P.2d 173 (1963).

VI. MOTOR VEHICLE.

"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., 96 N.M. 117, 628 P.2d 687 (Ct. App. 1981).

No distinction between propulsion and nonpropulsion parts. - See same catchline under analysis line XI, "Vehicle."

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. The combination of units being less than 65 feet in length, no oversize permit is required for operation of this vehicle. 1961-62 Op. Att'y Gen. No. 61-39.

Snowmobile. - The term "motor vehicle" does not include a snowmobile. State v. Eden, 108 N.M. 737, 779 P.2d 114 (Ct. App. 1989).

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.

Self-propelled "go-cart" is a motor vehicle within the intendment of 64-1-6, 1953 Comp., and is, therefore, subject to registration pursuant to former 64-3-2, 1953 Comp. (similar to 66-3-1 NMSA 1978), if it is "driven or moved upon a highway." 1964 Op. Att'y Gen. No. 64-148.

The only classification which appears to be applicable to self-propelled go-carts is that of "motor vehicle," and therefore the utilization of 64-11-1.1, 1953 Comp. (similar to 66-6-2 NMSA 1978), entitled "Passenger vehicles - Registration fees" to determine the correct registration fee would probably be appropriate. 1964 Op. Att'y Gen. No. 64-148.

VII. OWNER.

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.

VIII. PERSON.

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, 98 N.M. 771, 652 P.2d 1222 (Ct. App. 1982)(specially concurring opinion).

IX. SCHOOL BUS.

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 65-2-126 NMSA 1978). 1969 Op. Att'y Gen. No. 69-110.

X. SPECIAL MOBILE EQUIPMENT.

"Incidental" means subordinate, nonessential, as occurring merely by chance or without intention or calculation. Halliburton Co. v. Property Appraisal Dep't, 88 N.M. 476, 542 P.2d 56 (Ct. App. 1975).

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." 1957-58 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.

Mole. - The "mole" is not "special equipment" as defined in 64-1-12, 1953 Comp., because, aside from its not being a vehicle as defined in 64-1-6A, 1953 Comp., it is not one of the vehicles specified in the section, nor does it come within the general descriptive terms as set forth in 64-1-12, 1953 Comp. Gibbons & Reed Co. v. Bureau of Revenue, 80 N.M. 462, 457 P.2d 710 (1969).

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, 80 N.M. 462, 457 P.2d 710 (1969).

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. Property Appraisal Dep't, 88 N.M. 476, 542 P.2d 56 (Ct. App. 1975).

XI. VEHICLE.

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, 88 N.M. 476, 542 P.2d 56 (Ct. App. 1975).

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., 96 N.M. 117, 628 P.2d 687 (Ct. App. 1981).

In moving itself, a machine is not transporting property within the meaning of the Motor Vehicle Code. Kaiser Steel Corp. v. Revenue Div., 96 N.M. 117, 628 P.2d 687 (Ct. App. 1981).

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

66-1-4.1. Definitions.

As used in the Motor Vehicle Code [66-1-1 NMSA 1978]:

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 severe mobility impairment to safely exit and enter a motor vehicle and that is immediately adjacent to a designated disabled parking space 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 with blue striping;

C. "additional place of business", for dealers and wreckers of vehicles, 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 B 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;

D. "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 of one percent alcohol but excluding medicinal bitters; and

E. "authorized emergency vehicle" means any fire department vehicle, police vehicle, 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.

History: 1978 Comp., § 66-1-4.1, enacted by Laws 1990, ch. 120, § 2; 1999, ch. 297, § 4.

ANNOTATIONS

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. 1959-60 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 [66-1-1 NMSA 1978]:

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 state highway and transportation department;

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.

ANNOTATIONS

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, 52 N.M. 193, 195 P.2d 86 (1948).

Neither business nor residential district exists where buildings away from highway. - An instruction on speed limits in business and residential districts was properly refused since evidence that there were three residences behind a filling station near which accident occurred, the houses being from 250 to 900 feet back from the highway with only one facing the highway, failed to indicate that the accident happened in either kind of district. Floeck v. Hoover, 52 N.M. 193, 195 P.2d 86 (1948).

Burden of proof on party alleging business district. - Party desiring instructions on speed limit has burden of proving by actual measurements that area taken up by buildings, excluding the vacant yard area, exceeded 50% of the statutory footage of 300 feet along the highway. Floeck v. Hoover, 52 N.M. 193, 195 P.2d 86 (1948).

Not error to refuse instruction where definitional criteria not met. - When stated in direct testimony that of a total distance of 640.9 feet, 396.5 feet was found to be building frontage, yet when the witness was pinned down on cross-examination he asserted that within any given 300-foot distance the building frontage was less than 50%, and as 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., 60 N.M. 186, 289 P.2d 626 (1955).

66-1-4.3. Definitions.

As used in the Motor Vehicle Code [66-1-1 NMSA 1978]:

A. "camping body" means a vehicle body primarily designed or converted for use as temporary living quarters for recreational, camping or travel activities;

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 more than fifteen 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" means the alleged violator has entered a plea of guilty or nolo contendere or has been found guilty in the trial court and has waived or exhausted all rights to an appeal;

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.

ANNOTATIONS

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".

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 2003 amendment, effective July 1, 2003, rewrote Subsection J to the extent that a detailed comparison is impracticable.

66-1-4.4. Definitions.

As used in the Motor Vehicle Code [66-1-1 NMSA 1978]:

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

B. "dealer", except as herein 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 combination gross 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 disabled parking space" means any space, including an access aisle, marked and reserved for the parking of a passenger vehicle that carries registration plates or a parking placard indicating disability in accordance with Section 66-3-16 NMSA 1978, and designated by a conspicuously posted sign bearing the international disabled symbol of a wheelchair and if 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 any 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. "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;

L. "driver's license" means a license or a class of license issued by a state or other jurisdiction to an individual that authorizes the individual to drive a motor vehicle; and

M. "driveaway-towaway operation" means any 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.

History: 1978 Comp., § 66-1-4.4, enacted by Laws 1990, ch. 120, § 5; 1991, ch. 160, § 2; 1999, ch. 297, § 5.

ANNOTATIONS

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."

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".

Driveaway-towaway saddle mount combinations towing over one vehicle illegal. - State highway commission [State transportation commission] cannot legally issue permits for the movement of trucks in driveaway-towaway saddle mount combinations of more than one towed vehicle. 1959-60 Op. Att'y Gen. No. 59-38.

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 [66-1-1 NMSA 1978]:

A. "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;

B. "established place of business", for a dealer or wrecker of vehicles, means a place:

(1) devoted exclusively to the business for which the dealer or wrecker is licensed and the business incidental thereto;

(2) identified by a prominently displayed sign giving the dealer's or wrecker'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;

(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 wrecker and large enough to provide a safe place to keep the books and records of the dealer or wrecker;

(5) where the principal portion of the business of the dealer or wrecker 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

C. "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.

66-1-4.6. Definitions.

As used in the Motor Vehicle Code [66-1-1 NMSA 1978]:

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 [Chapter 66, Article 5 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 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.

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.

66-1-4.7. Definitions.

As used in the Motor Vehicle Code [66-1-1 NMSA 1978]:

A. "gross vehicle weight" means the weight of a vehicle without load, plus the weight of any load thereon;

B. "gross vehicle weight rating" means the value specified by the manufacturer as the maximum loaded weight of a vehicle or a vehicle combination, or registered gross weight, whichever is greater; the "gross vehicle weight rating" of a vehicle or a vehicle combination is the gross vehicle weight rating of the power unit plus the gross vehicle weight rating of the towed units; and

C. "gross weight" means gross vehicle weight as defined in this section.

History: 1978 Comp., § 66-1-4.7, enacted by Laws 1990, ch. 120, § 8.

ANNOTATIONS

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 [66-1-1 NMSA 1978]:

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 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 (1998).

Am. Jur. 2d, A.L.R. and C.J.S. references. - Term "highway" in statutory provision relative to vehicular traffic as including street, 54 A.L.R. 1250.

66-1-4.9. Definitions.

As used in the Motor Vehicle Code [66-1-1 NMSA 1978]:

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

B. "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;

C. "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

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

History: 1978 Comp., § 66-1-4.9, enacted by Laws 1990, ch. 120, § 10; 1998, ch. 48, § 1.

ANNOTATIONS

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 64-14-16, 1953 Comp. (similar to this section), for the purpose of determining whether there existed at that point an intersection as defined under 64-14-17, 1953 Comp. (similar to this section). Sallee v. Spiegel, 72 N.M. 145, 381 P.2d 425 (1963).

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, 62 N.M. 405, 311 P.2d 381 (1957).

Accident 12 feet from alley entrance not in intersection. - Where plaintiff was struck by defendant's automobile while crossing east-west street some 12 and one-half feet west of where an alley ran into the street from the south but did not cross to the north side of the street, there was no evidence that the accident occurred in an intersection as defined by 64-14-17, 1953 Comp. (similar to this section). Sallee v. Spiegel, 72 N.M. 145, 381 P.2d 425 (1963).

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, 67 N.M. 350, 355 P.2d 284 (1960).

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 [66-1-1 NMSA 1978]:

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. "license", without modification, means any license, temporary instruction permit or temporary license issued or recognized under the laws of New Mexico pertaining to the licensing of persons to operate motor vehicles;

D. "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

E. "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.

66-1-4.11. Definitions.

As used in the Motor Vehicle Code [66-1-1 NMSA 1978]:

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 described therein has been transferred to the New Mexico dealer or distributor named therein 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 in ordinary trade and commerce; every such certificate shall contain 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, and the certificate shall contain a description of the vehicle, the number of cylinders, type of body, engine number and the serial number or other standard identification number provided by the manufacturer of the vehicle;

E. "metal tire" means every tire of which the surface in contact with the highway is wholly or partly of metal or other hard nonresilient material, except that a snow tire with metal studs designed to increase traction on ice or snow is not considered a metal tire;

F. "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;

G. "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, excluding a tractor;

H. "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;

I. "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; but 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

J. "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 [66-5-201 to 66-5-239 NMSA 1978]; 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.

ANNOTATIONS

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.

Am. Jur. 2d, A.L.R. and C.J.S. references. - Applicability of state or municipal traffic or vehicle regulations to those engaged in handling United States mail, 18 A.L.R. 1169.

Motorcycle as within statute or ordinance in relation to motorcars, motor-driven cars, etc., 48 A.L.R. 1090, 70 A.L.R. 1253.

Airplanes as within terms "vehicle," "motor vehicle," etc., 165 A.L.R. 916.

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 [66-1-1 NMSA 1978]:

A. "nonresident" means every person who is not a resident of this state;

B. "nonresident commercial driver's license" means a commercial driver's license issued by a state defined within "state" to an individual who resides in another state or foreign jurisdiction; and

C. "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.

66-1-4.13. Definitions.

As used in the Motor Vehicle Code [66-1-1 NMSA 1978]:

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;

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 not inconsistent 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. "operator" means driver, as defined in Section 66-1-4.4 NMSA 1978; and

F. "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.

ANNOTATIONS

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

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

66-1-4.14. Definitions.

As used in the Motor Vehicle Code [66-1-1 NMSA 1978]:

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

I. "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;

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

K. "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

L. "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.

ANNOTATIONS

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

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.

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, 67 N.M. 350, 355 P.2d 284 (1960).

"Parking lot". - Careless driving, as defined in 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 (1998).

66-1-4.15. Definitions.

As used in the Motor Vehicle Code: [66-1-1 NMSA 1978]

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

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

F. "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;

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

H. "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;

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

J. "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;

K. "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 and acted upon by the division after the expiration of at least one year after date of revocation;

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

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

N. "roadway" means that portion of a street or highway improved, designed or ordinarily used for vehicular travel, exclusive of the berm or shoulder, and in the event a highway includes two or more separate roadways, the term "roadway" refers to any such roadway separately but not to all such roadways collectively.

History: 1978 Comp., § 66-1-4.15, enacted by Laws 1990, ch. 120, § 16; 2001, ch. 127, § 2.

ANNOTATIONS

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, 52 N.M. 193, 195 P.2d 86 (1948).

Neither business nor residential district exists if buildings away from highway. - An instruction on speed limits in business and residential districts was properly refused since evidence that there were three residences behind a filling station near which accident occurred, the houses being from 250 to 900 feet back from the highway with only one facing the highway, failed to indicate that the accident happened in either kind of district. Floeck v. Hoover, 52 N.M. 193, 195 P.2d 86 (1948).

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 [66-1-1 NMSA 1978]:

A. "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 are cracked and broken;

B. "safety zone" means the area or space officially set apart within a highway for the exclusive use of pedestrians and which 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. "school bus" means any motor vehicle operating under the authority of the state board of education or private school or parochial school interests that is used to transport children, students or teachers to and from schools or to and from any school activity, but not including any 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 pupils;

(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 pupils; or

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

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

E. "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;

F. "semitrailer" means any 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;

G. "sidewalk" means that 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;

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

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

J. "special mobile equipment" means every 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;

K. "specially-constructed vehicle" means every 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;

L. "state" means any state, territory or possession of the United States, the District of Columbia or any province of the Dominion of Canada;

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

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

O. "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;

P. "street" or "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;

Q. "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 which rendered him incapable of safely driving a motor vehicle, regardless of whether the person's sentence was suspended or deferred; and

R. "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.

ANNOTATIONS

The 1991 amendment, effective July 1, 1991, added the language beginning with "and, except for" in Subsection E; in Subsection J, inserted "but not limited to" preceding "farm tractors" and deleted a second sentence, which read "The foregoing enumeration shall be deemed partial and shall not operate to exclude other such vehicles that are within the general terms of this section"; and, in Subsection R, substituted "a person's driver's license" for "the driver's license" and deleted "but only during the period of such suspension" at the end.

2003 amendments. - Laws 2003, Ch. 164, § 2, effective July 1, 2003, substituting "public regulation" for "state corporation" in Paragraphs C(1) and (2); deleting "66-2-3.1" following "of Sections 66-2-3" in Subsection E; substituting "transportation" for "highway" following "legislature, the state" in Subsection M; substituting "a municipal ordinance or a tribal law" for "minicipal ordinance" following "federal law or" in Subsection Q, was approved April 4, 2003. This section was also amended by Laws 2003, ch. 143, § 7, effective July 1, 2003, which would have amended the section, making the same changes as those made by Laws 2003, ch. 164, § 2, with the exception of the change made in subsection Q. This section is set out as amended by Laws 2003, ch. 164, § 2. See 12-1-8 NMSA 1978.

66-1-4.17. Definitions.

As used in the Motor Vehicle Code [66-1-1 NMSA 1978]:

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. "through highway" means every highway or portion thereof 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;

D. "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;

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

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

G. "traffic safety bureau" means the traffic safety bureau of the state highway and transportation department;

H. "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;

I. "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;

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

K. "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;

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

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

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

O. "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 thereto; and

P. "truck tractor" means every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so 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.

ANNOTATIONS

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".

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 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.

2003 amendments. - Laws 2003, ch. 164, § 3, effective July 1, 2003, inserting "of the department of public safety" following "motor transportation division" in Subsection D; adding present Subsections L and M and redesignating former Subsections L to N as present Subsections N to P, was approved April 4, 2003. This section was also amended by Laws 2003, ch. 141, § 1, effective June 20, 2003, which would have amended this section, making the same substitution as that made by Laws 2003, ch. 164, § 3, in Subsection D and adding a Subsection I to define "transportation inspector," redesignating the followingsubsections accordingly. This section is set out as amended by Laws 2003, ch. 164, § 3. See 12-1-8 NMSA 1978.

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

Pedestrian has right-of-way when no signal of traffic-control type. - 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 64-18-33, 1953 Comp. (similar to 66-7-334 NMSA 1978), 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, 78 N.M. 566, 434 P.2d 388 (1967).

Neither flashing yellow nor flashing red signal lights are "traffic-control signals" within the meaning of 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, 78 N.M. 566, 434 P.2d 388 (1967).

Am. Jur. 2d, A.L.R. and C.J.S. references. - Liability for personal injuries by tractor, 48 A.L.R. 939.

66-1-4.18. Definitions.

As used in the Motor Vehicle Code [66-1-1 NMSA 1978]:

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 [66-1-1 NMSA 1978]:

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 or body of any vehicle or motor vehicle, except devices moved exclusively by human power or used exclusively upon stationary rails or tracks; and

C. "vehicle-business number" means the distinctive registration number given by the division to any manufacturer, wrecker of vehicles or dealer.

History: 1978 Comp., § 66-1-4.19, enacted by Laws 1990, ch. 120, § 20.

66-1-4.20. Definitions.

As used in the Motor Vehicle Code [66-1-1 NMSA 1978]:

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;

B. "wrecker of vehicles" means every person actively engaged in the business of acquiring vehicles that are required to be registered under the Motor Vehicle Code for the purpose of dismantling such vehicles as scrap material or for the resale of reclaimable parts and who, for those purposes, maintains within this state an established place of business; and

C. "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.

66-1-4.21. Additional definitions.

As used in the Motor Vehicle Code [66-1-1 NMSA 1978]:

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 [66-1-1 NMSA 1978] 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 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. Laws 1996, ch. 81 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 15, 1996, 90 days after adjournment of the legislature.

ARTICLE 2
MOTOR VEHICLE DIVISION OF TAXATION AND REVENUE DEPARTMENT

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

ANNOTATIONS

Repeals. - Laws 1991, ch. 160, § 22 repeals 66-2-1 and 66-2-2 NMSA 1978, as amended by Laws 1987, ch. 268, §§ 18 and 19, relating to powers and duties and director of the motor vehicle division, effective July 1, 1991. For provisions of former sections, see 1989 Replacement Pamphlet.

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 that pertain to the licensing of drivers and that pertain to the financial responsibility of owners and drivers.

B. The secretary may seek an injunction in any district court to require compliance with or prohibit violation of the Motor Vehicle Code. A request for an injunction may seek the prohibition of the buying, selling, exchanging or operation of vehicles of a type required to be registered under the Motor Vehicle Code.

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

ANNOTATIONS

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.

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.

Director had access to all records pertaining to division. - Motor vehicle commissioner can, to the extent required by him, have access to all applications and other records pertaining to the division while in possession of appointed agent. 1959-60 Op. Att'y Gen. No. 59-33 (rendered prior to 1991 amendment).

Director could also regulate manner of agent's conduct of business. - The general authority of the motor vehicle commissioner 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. 1959-60 Op. Att'y Gen. No. 59-33 (rendered prior to 1991 amendment).

Furnishing of data to others for additional fees discretionary. - It is discretionary with the motor vehicle commissioner whether appointed agents use division records while in agent's possession for furnishing data to others for additional fees, other than regular service fees as set by law. 1959-60 Op. Att'y Gen. No. 59-33 (rendered prior to 1991 amendment).

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 repeals 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 the former section, see the 1994 Replacement Pamphlet. For present comparable provisions, see 9-11-6.2 NMSA 1978.

66-2-4. Repealed.

ANNOTATIONS

Repeals. - Laws 1991, ch. 160, § 22 repeals 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 1989 Replacement Pamphlet.

66-2-5. Director to prescribe forms.

The director shall prescribe and provide suitable forms of applications, certificates of title, evidences of registration, drivers' licenses and all other forms requisite or deemed necessary to carry out the provisions of the Motor Vehicle Code [66-1-1 NMSA 1978], 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.

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 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.

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 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.

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

Title 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, 82 N.M. 30, 474 P.2d 712 (Ct. App. 1970).

No prior security interest where application filed after 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, 82 N.M. 30, 474 P.2d 712 (Ct. App. 1970).

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 employee or contractor or for any former department employee or contractor to disclose to any person other than another employee of the department any personal information about an individual obtained by the department in connection with a driver's license or permit, the titling or registration of a vehicle or an identification card issued by the department pursuant to the Motor Vehicle Code [66-1-1 NMSA 1978] 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 Uniform Anatomical Gift Act [24-6A-1 to 24-6A-15 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.

ANNOTATIONS

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.

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

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. It was not enacted by the legislature, and it is not part of the law.

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

A. The division is authorized to 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 which is fictitious or which has been unlawfully or erroneously issued.

B. If the division determines that any documents proporting 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.

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

ANNOTATIONS

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 is authorized or required to give any notice under the Motor Vehicle Code [66-1-1 NMSA 1978] 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 his 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.

ANNOTATIONS

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, 111 N.M. 560, 807 P.2d 744 (Ct. App. 1991).

Necessity for procedural due process applies to suspension of one's driver's license by the state. City of Albuquerque v. Juarez, 93 N.M. 188, 598 P.2d 650 (Ct. App. 1979), overruled on other grounds, State v. Herrera, 111 N.M. 560, 807 P.2d 744 (Ct. App. 1991).

Evidentiary effect of proof of mailing. - This section was not intended to be read as a rule of evidence, nor does it purport to alter the essential elements required to establish the offense of driving with a revoked license. Thus, in a criminal proceeding, it 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, 93 N.M. 188, 598 P.2d 650 (Ct. App. 1979), overruled on other grounds, State v. Herrera, 111 N.M. 560, 807 P.2d 744 (Ct. App. 1991).

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, 111 N.M. 560, 807 P.2d 744 (Ct. App. 1991).

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 [66-1-1 NMSA 1978] 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 in general, see 29-1-1 NMSA 1978 et seq.

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

Bracketed material. - The bracketed material in Subsection A(4) was inserted by the compiler. It was not enacted by the legislature, and it is not part of the law.

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, 92 N.M. 266, 587 P.2d 44 (Ct. App.), cert. denied, 92 N.M. 260, 586 P.2d 1089 (1978) (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 (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 1989 amendment, effective July 1, 1989, designated the formerly undesignated provisions as Subsection A, making minor stylistic changes therein, and added Subsection B.

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.

Authority to appoint agents. - Commissioner (now director) 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.

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 director) 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. 1959-60 Op. Att'y Gen. No. 60-189.

Director could limit use of records by agent. - The general authority of the motor vehicle commissioner (now director) 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. 1959-60 Op. Att'y Gen. No. 59-33.

Furnishing of data to others for additional fees discretionary. - It is discretionary with the motor vehicle commissioner (now director of motor vehicle division) whether appointed agents use division records while in agent's possession for furnishing data to others for additional fees, other than regular service fees as set by law. 1959-60 Op. Att'y Gen. No. 59-33.

Agents not division employees for withholding purposes. - Agents could not be classified as employees of the motor vehicle division for withholding taxes, social security and retirement purposes. 1959-60 Op. Att'y Gen. No. 59-33.

Agent could be replaced for nonperformance. - Motor vehicle commissioner (now director of motor vehicle division) could replace any appointed agent for nonperformance of service in accordance with departmental policies. 1959-60 Op. Att'y Gen. No. 59-33.

All fees must be remitted to director. - Plan to have agent receive fees while working in a regular office violated 64-2-18, 1953 Comp. (similar to this section), and also 64-2-19, 1953 Comp. (similar to 66-2-15 NMSA 1978), where the money was remitted to the division and not to the commissioner (now director). 1967 Op. Att'y Gen. No. 67-98.

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

A. Any class A county or municipality within a class A county which 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. When designated as an agent pursuant to this section, the county or municipality 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 which fails to pass the vehicle emission inspection.

C. When designated as an agent pursuant to this section, the county or municipality shall reimburse the department for any additional costs incurred by the department as a result of the designation of the county or municipality as an agent. Money reimbursed to the department is appropriated to the department for administration and enforcement of the Motor Vehicle Code [66-1-1 NMSA 1978].

D. 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: 1978 Comp., § 66-2-14.1, enacted by Laws 1985, ch. 95, § 2; 1987, ch. 268, § 20; 1995, ch. 135, § 7.

ANNOTATIONS

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 the agents' administrative service fees. The agents' reports are subject to audit and acceptance by the department. Before undertaking any duty in behalf of the director, the agents shall execute a surety bond in such amount as the director requires in the form required by law of public officials. The department shall have such employees covered by such bond as the department may designate.

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

ANNOTATIONS

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 64-2-18, 1953 Comp. (similar to this section), and also 64-2-19, 1953 Comp. (similar to 66-2-15 NMSA 1978), where the money was remitted to the division and not to the commissioner (now director). 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 (64-2-19, 1953 Comp., similar to this section), if these bonds are approved by the commissioner (now director) as to amount and are

amended to provide for these officials' added responsibility. 1959-60 Op. Att'y Gen. No. 59-84.

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

A. The secretary is authorized to establish by rule or regulation a schedule of administrative service fees to be collected by the agents or department to defray the costs of operation of the agents' or department's offices and of rendering service to the public. Fees shall be fifty cents ($.50) for each item or transaction or service performed by the agent or department for the secretary 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 service fees shall be remitted as provided in Section 66-2-15 NMSA 1978.

C. Administrative service 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, no 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 be paid an administrative service fee.

E. The secretary is authorized to establish by regulation 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.

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.

ANNOTATIONS

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

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.

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

Provision sole authority for collecting fee and exclusive for agents. - Section 64-2-20, 1953 Comp. (similar to this section) was the one authorizing commissioner (now director) 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. 1959-60 Op. Att'y Gen. No. 60-189.

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

The commissioner of motor vehicles (now director of motor vehicle division) has authority to establish what constitutes an item or transaction and to collect an administrative fee to defray costs of operation and of rendering service to the public. 1964 Op. Att'y Gen. No. 64-154.

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).

66-2-17. Administrative hearing; procedure; appeals from secretary's decision and order; exhaustion of administrative remedies.

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 [66-1-1 NMSA 1978] by filing with the secretary a

written protest against the action or inaction taken 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 any hearing conducted on the protest under Subsection D of this section. The secretary may, in appropriate cases, provide for an informal conference before setting 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 or inaction proposed by the department.

C. Upon timely receipt of a protest, the department or hearing officer shall promptly set a date for hearing and on that date hear the protest.

D. A hearing officer shall be designated by the secretary to conduct the hearing. A person may appear at a hearing for himself or be represented by a bona fide employee or an attorney. Hearings shall not be open to the public except upon request of the person and may be postponed or continued at the discretion of the hearing officer.

E. In hearings before the hearing officer, the technical rules of evidence shall not apply, but in ruling on the admissibility of evidence, the hearing officer may require reasonable substantiation of statements or records tendered, the accuracy or truth of which is in reasonable doubt.

F. In hearings before the hearing officer, the Rules of Civil Procedure for the District Courts shall not apply, but the hearing shall be conducted so that both complaints and defenses are amply and fairly presented. To this end, the hearing officer shall hear arguments, permit discovery, entertain and dispose of motions, require written expositions of the case as the circumstances justify and render a decision in accordance with the law and the evidence presented and admitted.

G. In the case of the hearing of any protest, the hearing officer shall make and preserve a complete record of the proceedings. At the beginning of the hearing, the hearing officer shall inform the person of the person's right to representation. The hearing officer, within thirty days of the hearing, shall inform the protestant in writing of the decision, informing the protestant at the same time of the right to, and the requirements for perfection of, an appeal from the decision to the district court and of the consequences of a failure to appeal. The written decision shall embody an order granting or denying the relief requested or granting such part thereof as seems appropriate.

H. If the protestant or secretary is dissatisfied with the decision and order of the hearing officer, the party may appeal pursuant to the provisions of the Administrative Procedures Act [12-8-1 to 12-8-25 NMSA 1978].

I. No court of this state has jurisdiction to entertain any proceeding by any person in which the person calls into question the application to that person of any provision of the Motor Vehicle Code, except as a consequence of the appeal by that person to the district court from the action and order of the secretary or hearing officer as provided for in this section.

J. Nothing in this section shall be construed to authorize any criminal proceedings hereunder or to authorize an administrative protest of the issuance of a subpoena or summons.

History: Laws 1995, ch. 129, § 3.

ANNOTATIONS

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

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

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

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 1281.

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. Every motor vehicle, trailer, semitrailer and pole trailer when driven or moved upon a highway is subject to the registration and certificate of title provisions of the Motor Vehicle Code [66-1-1 NMSA 1978] 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) any implement of husbandry that is only incidentally operated or moved upon a highway;

(4) any special mobile equipment;

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

(6) freight trailers if they are:

(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) freight trailers or utility trailers 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) farmers and ranchers who transport to market only the produce, animals or fowl produced by them or who transport back to their farms and ranches supplies for use thereon; or

(c) persons who transport 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; and

(8) any such vehicle moved on a highway by a towing service as defined in Section 59A-50-2 NMSA 1978.

B. No certificate of title need be obtained for any vehicle of a type subject to registration owned by the government of the United States.

C. Every manufactured home shall be subject to the registration and certificate of title provisions of the Motor Vehicle Code, and each manufactured home shall at all times bear a current registration plate.

History: 1953 Comp., § 64-3-1, enacted by Laws 1978, ch. 35, § 21; 1999, ch. 227, § 1; 2001, ch. 158, § 1.

ANNOTATIONS

I. General Consideration.
II. Manufacturers, Dealers and Nonresidents.
III. Crossing Highway.
IV. Implements of Husbandry.
V. Special Mobile Equipment.
VI. House Trailers.

I. GENERAL CONSIDERATION.

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 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.

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

Lessee's 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. 1953-54 Op. Att'y Gen. No. 5732.

Registration of "go-carts". - The self-propelled "go-cart" was a motor vehicle within the intendment of 64-1-6, 1953 Comp. (similar to former 66-1-4 NMSA 1978) and was, therefore, subject to registration pursuant to 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 64-1-6, 1953 Comp. (similar to former 66-1-4 NMSA 1978) and, therefore, not subject to registration pursuant to 63-3-2, 1953 Comp. (similar to this section). 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 §§ 75 to 84.

Applicability to public officials or employees, of regulations as to registration and licensing of motor vehicles, 19 A.L.R. 463, 23 A.L.R. 418.

Defense of contributory negligence as affected by failure to comply with regulations as to registration or license, 35 A.L.R. 62, 38 A.L.R. 1038, 43 A.L.R. 1153, 54 A.L.R. 374, 58 A.L.R. 532, 61 A.L.R. 1190, 78 A.L.R. 1028, 87 A.L.R. 1469, 111 A.L.R. 1258, 163 A.L.R. 1375.

License regulations discriminating against nonresidents, 61 A.L.R. 347, 112 A.L.R. 63.

Validity of requirement of payment of property taxes as condition precedent to issuance of automobile licenses, 62 A.L.R. 304.

Construction and application of exemption or exception provisions of statute requiring registration, 91 A.L.R. 422.

Validity of automobile registration or license fee as affected by classification or discrimination, 126 A.L.R. 1419.

Double taxation imposing license fee on operation in streets of vehicles owned by one who is subject to an occupation tax on business or occupation involving use or leasing of vehicles, 147 A.L.R. 309.

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.

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, 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. 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. 1953-54 Op. Att'y Gen. No. 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. 1955-56 Op. Att'y Gen. No. 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. 1959-60 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. 1955-56 Op. Att'y Gen. No. 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 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. 1955-56 Op. Att'y Gen. No. 6429.

Pickup truck per se is not 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. 1955-56 Op. Att'y Gen. No. 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.

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." 1957-58 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. 1953-54 Op. Att'y Gen. No. 5906.

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, 80 N.M. 462, 457 P.2d 710 (1969).

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. 1953-54 Op. Att'y Gen. No. 5735.

VI. HOUSE TRAILERS.

Necessity for current plates. - 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. 1959-60 Op. Att'y Gen. No. 59-53.

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. 1959-60 Op. Att'y Gen. No. 59-53.

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 proportional registration or full reciprocity 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 after September 30, 1984 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 65-1-13 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 card.

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.

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, recompiles 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.

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.

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

Internal Revenue Code. - Section 4481 of the United States Internal Revenue Code of 1986, referred to in this section, is codified at 26 U.S.C. § 4481.

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 proportional registration 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.

ANNOTATIONS

Recompilations. - Laws 1998 (1st S.S.), ch. 10, § 10, recompiles 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.

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. 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

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.

Recompilations. - Laws 1998 (1st S.S.), ch. 10, § 10, recompiles 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.

Special Fuels Tax Act. - The Special Fuels Tax Act, referred to in Subsection D, which appeared as 7-16-1 to 7-16-26 NMSA 1978, and 7-16-6 NMSA 1978, referred to in Subsection A(5), were repealed by Laws 1992, ch. 51, § 23, effective January 1, 1993. For present comparable provisions, see Chapter 7, Article 16A NMSA 1978.

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

A. The motor vehicle and motor transportation divisions, according to their appropriate jurisdictions, shall grant permanent registration to freight trailers 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 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 vehicle and motor transportation divisions 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.

ANNOTATIONS

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

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. Proportional registration of fleets; application; fee; formula; payment.

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

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

(2) in-state miles, which is the total number of miles operated in this state during the preceding year by the motor vehicles in the fleet during that year; and

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

B. [The] the application for each fleet 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 fleet miles;

(2) determine the total amount necessary under Sections 66-6-3 and 66-6-4 NMSA 1978 to register each vehicle in the fleet for which 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.

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, recompiles former 65-1-13 NMSA 1978, relating to proportional registration of fleets, as 66-3-2.1 NMSA 1978, effective July 1, 1998.

Bracketed material. - The bracketed material in Subsection B was inserted by the compiler. It was not enacted by the legislature and is not part of the law.

Law reviews. - For comment, "Coal Taxation in the Western States: The Need for a Regional Tax Policy," see 16 Nat. Resources J. 415 (1976).

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.

Discrimination against busses, jitneys, or other carriers between fixed termini or on regular route or time schedules, 75 A.L.R. 26.

66-3-2.2. Registration and identification of proportionally registered vehicles; fee; effect of registration.

A. The division shall register the vehicles so described and identified 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 proportionally registered vehicle and other information required by law and regulation and shall be carried in the vehicle at all times.

B. Fleet 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.

ANNOTATIONS

Recompilations. - Laws 1998 (1st S.S.), ch. 10, § 10, recompiles 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.

66-3-2.3. Proportional registration; jurisdictions.

The right to the privileges and benefits of proportional registration of fleet vehicles extended by Sections 65-1-13 through 65-1-23 NMSA 1978 or by any contract, agreement or declaration made accordingly shall be subject to the condition that each fleet vehicle proportionally registered in this state shall also be proportionally or otherwise properly registered in at least one other jurisdiction during the period for which it is proportionally registered in New Mexico or that each fleet vehicle be proportionally registered in New Mexico under the terms of a multistate agreement on registration of vehicles to which this state is a party.

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.

ANNOTATIONS

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

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

Motor vehicles acquired by the owner after the commencement of the registration year and subsequently added to a proportionally registered fleet 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.

ANNOTATIONS

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

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

If any motor vehicle is withdrawn from a proportionally 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 proportional registration cards and other identification devices which have been issued with respect to such 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.

ANNOTATIONS

Recompilations. - Laws 1998 (1st S.S.), ch. 10, § 10, recompiles 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.

66-3-2.6. Preservation of proportional registration records; audit.

Any owner whose application for proportional registration 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 his records, books or papers at any place outside of the state, the director or his 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.

ANNOTATIONS

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.

Recompilations. - Laws 1998 (1st S.S.), ch. 10, § 10, recompiles 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.

66-3-2.7. New fleet; estimated mileage.

The initial application for proportional registration of a fleet shall state the mileage data with respect to such fleet for the preceding year in this and other jurisdictions. If no operations were conducted with such fleet during the preceding year, the application shall contain a full statement of the proposed method of operation and estimates of annual mileage in this state and other jurisdictions. The division shall determine the in-state and total fleet miles to be used in computing the fee payment for the fleet. The division may evaluate and adjust the estimate in the application if it is not satisfied as to the correctness thereof.

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.

ANNOTATIONS

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

66-3-2.8. Fleet registration; denial.

The division may refuse to accept proportional registration applications for the registration of vehicles based in another jurisdiction if the division shall find that such 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.

ANNOTATIONS

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

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

The provisions of Sections 65-1-13 through 65-1-23 NMSA 1978 shall constitute complete authority for the registration of fleet vehicles upon a proportional registration basis 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.

ANNOTATIONS

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

66-3-2.10. Proportional registration not exclusive.

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

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.

ANNOTATIONS

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

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 1978 Comp., § 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, recompiles 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 card.

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 a tax identification card in one or more copies to each motor carrier who applies for a tax identification card, provided that the card shall be renewed automatically each year as long as the motor carrier continues to be subject to the weight distance tax and special fuel user permit requirements. The tax identification card shall contain the department's identifying number for the motor carrier and such other information as the department deems necessary.

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.

ANNOTATIONS

Recompilations. - Laws 1998 (1st S.S.), ch. 10, § 10, recompiles former 65-1-12.1 NMSA 1978, relating to tax identification cards, as 66-3-3.1 NMSA 1978, effective July 1, 1998.

66-3-4. Application for registration and certificate of title.

A. 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 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, insofar as the hereinafter specified data may exist with respect to a given vehicle, the make, model, type of body, the number of cylinders, type of fuel used, the serial number of the vehicle, the odometer reading, the engine or other identification number provided by the manufacturer of the vehicle, whether new or used and, if a vehicle not previously registered, the 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 any interest therein and the nature of every such 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 [66-1-1 NMSA 1978], 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. Any owner of a vehicle subject to registration which has never been registered in this state and which has been registered in another state shall have such vehicle examined and inspected for its identification number or engine number by the division or an officer or designated agent thereof incident to securing registration, reregistration or a certificate of title from the division.

C. When such 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.

History: 1953 Comp., § 64-3-4, enacted by Laws 1978, ch. 35, § 24; 1981, ch. 361, § 4; 2001, ch. 9, § 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 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. 1953-54 Op. Att'y Gen. No. 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. 1961-62 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. 1955-56 Op. Att'y Gen. No. 6365.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 85 to 89.

License tax or fee on automobiles as affected by interstate commerce clause, 25 A.L.R. 37, 52 A.L.R. 533, 115 A.L.R. 1105.

Registration of automobile as affected by the name used to identify owner, 47 A.L.R. 1103.

Constitutionality, construction and effect of statutes in relation to foreign-owned vehicles operating within state, 82 A.L.R. 1091, 138 A.L.R. 1499.

60 C.J.S. Motor Vehicles §§ 70 to 77, 101.

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.

ANNOTATIONS

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

66-3-6. Temporary permits and demonstration plates.

A. The department may issue a temporary 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 permit shall be valid for a period not to exceed thirty business days from the day it is validated by the department. Temporary permits shall not be extended nor another issued except for good cause shown.

B. The department may issue a temporary permit to individuals and financing institutions to operate a vehicle for the purpose of demonstrating the vehicle for resale. The temporary permit shall be valid for a period not to exceed five business days from the day it is validated by the department. Temporary permits shall not be extended nor another issued except for good cause shown.

C. The department may issue a temporary 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 temporary permit shall be valid for a period not to exceed ten business days, shall state the number of days for which the permit is valid and shall be validated by the signature of the manufacturer or transporter. Temporary permits shall not be extended nor another issued except for good cause shown.

D. The department shall issue or authorize the issuance of temporary transportation permits to dealers licensed pursuant to Section 66-4-1 NMSA 1978. Temporary transportation permits shall be used only on vehicles held in the inventory of the dealer to whom the permits are issued. The permits shall be used only for importing vehicles into this state or for transporting vehicles between dealers intrastate. Use of the permits shall be deemed compliance with the requirements of Section 66-3-4 NMSA 1978. The permits shall be valid for not more than five additional business days from the date of validation. Temporary transportation permits shall:

(1) name the dealer to whom the 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 permit; and

(4) be signed and dated by the dealer who executed the permit.

E. The department shall issue or authorize the issuance of temporary retail-sale permits to dealers licensed pursuant to Section 66-4-1 NMSA 1978. Temporary retail-sale permits shall be used only on vehicles sold at retail by the dealer to whom the temporary permits are issued and shall not be extended nor another issued for the same vehicle except for good cause shown. Use of the permits shall be deemed compliance with the provisions of Section 66-3-4 NMSA 1978. The permits shall be valid for not more than thirty additional days from the date of validation. Temporary retail-sale permits shall:

(1) name the dealer to whom the 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 permit.

F. The department shall issue, or authorize the issuance of, temporary demonstration plates to dealers licensed pursuant to Section 66-4-1 NMSA 1978. Temporary demonstration plates shall be used only on vehicles included in the inventory of the dealer to whom the temporary plates are issued. The temporary plates shall be used to allow the operation of vehicles for the limited purposes of testing, demonstrating or preparing a vehicle for sale or lease. Temporary demonstration plates 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 temporary plates shall be deemed compliance with the provisions of Section 66-3-4 NMSA 1978. A temporary demonstration plate, 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 temporary demonstration plates is required to maintain a list showing the plate assigned to each specific vehicle and make that list available to the department during normal business hours. Temporary demonstration plates shall:

(1) name the dealer to whom the plates are issued; and

(2) display a unique identification number assigned by the department.

G. In lieu of issuing temporary transportation permits, temporary retail-sale permits or temporary demonstration plates to dealers, the department may authorize in writing dealers licensed pursuant to Section 66-4-1 NMSA 1978 to print and use at their own cost temporary permits or plates to be used in conformance with the provisions of Subsections D, E and F of this section, subject to reasonable requirements established by the department.

H. The department shall prescribe the size, shape and content of all temporary permits and plates authorized by this section. No temporary permit or plate is valid until affixed to the vehicle for which it is validated in a manner prescribed by the department.

I. For the misuse of any temporary permit or plate authorized by this section by an individual, financing institution, manufacturer, transporter of manufactured homes, dealer, wrecker or dismantler, the secretary may revoke or suspend their use after a hearing as provided in Section 66-2-17 NMSA 1978.

J. The department shall collect an administrative fee of fifty cents ($.50) in addition to the actual cost of the temporary permit document or plate for each temporary permit or plate issued by the department to individuals, financial institutions, manufacturers, transporters, wreckers or dealers pursuant to this section.

K. The department may issue temporary transportation permits, temporary retail-sale permits and temporary demonstration plates to dealers in units of not less than one hundred permits at a fee established by the department to cover the actual cost of the permit or plate documents. No administrative fee shall be charged by the department when temporary permits or plates are issued by the department pursuant to the provisions of this subsection.

L. The fees authorized by Subsections J and K of this section to cover the actual cost of the temporary permit document or plate are appropriated to the department to defray the costs of administering the temporary permit and plate 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.

ANNOTATIONS

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.

The 1998 amendment, effective July 1, 1998, rewrote the section to the extent that a detailed comparison would be impracticable.

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. - 7A Am. Jur. 2d Automobiles and Highway Traffic § 153.

60 C.J.S. Motor Vehicles § 78.

66-3-7. Grounds for refusing registration or certificate of title.

The division may refuse registration or issuance of a certificate of title or any transfer of registration upon the ground that:

A. 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 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. the division has reasonable ground to believe that the vehicle is a stolen or embezzled vehicle or that 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;

D. the registration of the vehicle stands suspended or revoked for any reason as provided in the motor vehicle laws of this state;

E. the required fee has not been paid;

F. the motor vehicle excise tax has not been paid;

G. if the vehicle is a mobile home, the property tax has not been paid;

H. the owner's address, as shown in the records of the division, is within a class A county or within any 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

I. 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.

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 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. 1961-62 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 any certificate of title, 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.

ANNOTATIONS

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. Division to issue certificate of title and evidence of registration; release of lien; odometer statement.

A. The division 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. 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 director.

C. 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.

D. 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.

E. 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.

F. Whenever the owner of a vehicle subject to registration transfers his title or interest in the vehicle to a nonresident who desires to title the vehicle in the state of his residence, the division 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.

ANNOTATIONS

Cross references. - As to registration of off-highway motorcycles, see 66-3-1003 NMSA 1978.

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 (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, 74 N.M. 348, 393 P.2d 457 (1964); Clovis Fin. Co. v. Sides, 72 N.M. 17, 380 P.2d 173 (1963).

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, 74 N.M. 348, 393 P.2d 457 (1964).

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 director) 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. 1959-60 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; certificate of title.

Unless the certificate of title conveying ownership indicates the vehicle as "salvage", it shall be unlawful for any person to sell or otherwise convey ownership of any vehicle that has been damaged by collision or other occurrence to the extent that the cost of repairing the vehicle for safe operation on the highway exceeds its fair market value or that has been declared a total loss by an insurance company. This section shall not apply to any person who sells or otherwise conveys ownership if the damage did not occur when that person was the registered owner of the vehicle, the certificate of title did not indicate "salvage" when it was transferred to that person and that person has no knowledge that the cost of repair exceeded the fair market value or that the vehicle had been declared a total loss.

History: 1978 Comp., § 66-3-10.1, enacted by Laws 1990, ch. 120, § 24.

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. Central Mut. Ins. Co., 84 N.M. 461, 505 P.2d 56 (1973).

Error for court to disregard certificate and grant summary judgment. - An issue of fact on the question of ownership is present and if, in fact, party's father is found to be the owner, liability of defendant would be established upon a showing of his negligence and proximate causation. Cortez v. Martinez, 79 N.M. 506, 445 P.2d 383 (1968), overruled on other grounds McGeehan v. Bunch, 88 N.M. 308, 540 P.2d 238 (1975).

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, 62 N.M. 203, 307 P.2d 536 (1956).

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, 79 N.M. 506, 445 P.2d 383 (1968), overruled on other grounds McGeehan v. Bunch, 88 N.M. 308, 540 P.2d 238 (1975).

Certificate of title is only prima facie evidence of ownership under 64-3-10, 1953 Comp. (similar to this section) and true ownership may be shown by other proof. Western States Collection Co. v. Marable, 78 N.M. 731, 437 P.2d 1000 (1968).

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, 74 N.M. 348, 393 P.2d 457 (1964); Clovis Fin. Co. v. Sides, 72 N.M. 17, 380 P.2d 173 (1963).

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, 106 N.M. 589, 746 P.2d 1121 (Ct. App.), rev'd on other grounds, 106 N.M. 467, 745 P.2d 375 (1987).

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. General Accident Ins. Co., 106 N.M. 22, 738 P.2d 516 (1987).

Evidence contrary to record title did not rebut presumption of ownership. - See Fernandez v. Ford Motor Co., 118 N.M. 100, 879 P.2d 101 (Ct. App. 1994).

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, 74 N.M. 348, 393 P.2d 457 (1964).

Am. Jur. 2d, A.L.R. and C.J.S. references. - Evidentiary value of certificate of title to automobile issued by authorities of other state, 114 A.L.R. 699.

Prima facie case or presumption from registration of automobile in name of, or from proof of ownership by, defendant, as applicable to questions other than the master-servant relationship at time of accident, 122 A.L.R. 228.

66-3-13. Evidence of registration to be signed and exhibited on demand.

Every owner, upon receipt of registration evidence, shall write his signature thereon in a space provided. Every such registration evidence or duplicates thereof validated by the division shall be exhibited upon demand of any police officer.

History: 1953 Comp., § 64-3-13, enacted by Laws 1978, ch. 35, § 33.

ANNOTATIONS

Cross references. - For requirement that license be carried and exhibited on demand, see 66-5-16 NMSA 1978.

An urgent state interest is involved in checking vehicle registrations since there is a motor vehicle theft in New Mexico every two hours and 36 minutes, and in checking drivers' licenses since this will tend to protect the public in that it can keep many unsafe drivers off the highway; thus, 64-3-11 and 64-13-49, 1953 Comp. (similar to this section and 66-5-16 NMSA 1978 respectively) grant the police the unquestioned good faith right to detain motor vehicles for the purposes specified therein. State v. Bloom, 90 N.M. 226, 561 P.2d 925 (Ct. App. 1976), rev'd on other grounds, 90 N.M. 192, 561 P.2d 465 (1977).

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.

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, 90 N.M. 647, 567 P.2d 496 (Ct. App. 1977).

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 note heading "Section does not authorize random detention based on hunches" above.

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). But see note heading "Section does not authorize random detention based on hunches" above.

Detention unlawful when it becomes mere subterfuge for another purpose. - In conducting general license and registration checks under 64-3-11 and 64-13-49, 1953 Comp. (similar to this section and 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, 90 N.M. 226, 561 P.2d 925 (Ct. App. 1976), rev'd on other grounds, 90 N.M. 192, 561 P.2d 465 (1977), (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 motorists not immune from reasonable regulation. - In 64-3-11, 1953 Comp. (similar to this section) the words "Every such registration evidence or duplicates thereof certified by the division" operate to limit the application of this section to owners of motor vehicles which are required to be registered in New Mexico. However, this opinion should not be taken to mean that nonresident motorists in New Mexico are immune from reasonable regulation and investigation. 1966 Op. Att'y Gen. No. 66-62.

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 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 64-6-1A, 1953 Comp. (similar to 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. 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 64-6-1A, 1953 Comp. 1966 Op. Att'y Gen. No. 66-62.

Am. Jur. 2d, A.L.R. and C.J.S. references. - Registration of automobile as affected by name used to identify owner, 47 A.L.R. 1103.

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.

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 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.

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.

"Lieutenant-governor's aide" or "advisor" cannot be put on plate. - The department of motor vehicles (now division of motor vehicles) 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.

Applicability to public officials or employees, of regulations as to registration and licensing of motor vehicles, 19 A.L.R. 463, 23 A.L.R. 418.

Presumption of ownership of automobile by one in whose name it is registered or whose license plates it bears, 103 A.L.R. 138.

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.

66-3-15. 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 generally, 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 division of motor vehicles) 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. Special motorcycle registration plates for disabled persons.

A. The department shall issue a distinctive motorcycle registration plate to a disabled person who requests the plate for use on a motorcycle owned by the person and who proves satisfactorily to the department that he has suffered the loss, or the complete and total loss of use of, one or both legs at or above the ankle or of one or both arms at or above the wrist. The department shall not collect a fee in addition to regular motorcycle registration fees for issuance of a special motorcycle registration plate.

B. A person shall not falsely represent himself to be disabled in order to be eligible for a special motorcycle registration plate when he is in fact not disabled.

C. A special motorcycle registration plate issued to a disabled person by another state or foreign jurisdiction shall be honored until the person establishes residency in this state.

History: Laws 2001, ch. 180, § 1.

ANNOTATIONS

Effective dates. - Laws 2001, ch. 180, § 2 makes the act effective July 1, 2001.

66-3-16. Special registration plates; disabled persons; parking placard.

A. The division shall issue distinctive registration plates to any disabled person who so requests and who proves satisfactorily to the division that he has suffered the loss, or the complete and total loss of use of, one or both legs at or above the ankle or of one or both arms at or above the wrist for use on motor vehicles owned by the person. No fee in addition to the regular registration fee, if any, applicable to the motor vehicle shall be collected for issuance of special registration plates pursuant to this section.

B. No person shall falsely represent himself to be disabled so as to be eligible to be issued a special registration plate or a parking placard pursuant to this section when he is in fact not disabled. 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; or

(3) the placard is being used by ineligible persons.

C. Upon written application to the division accompanied by a medical statement by a licensed physician attesting to the permanent disability, a resident of the state who has a disability that limits or impairs the ability to walk, as provided in Subsection G of this section, may apply for and be granted the issuance of no more than two parking placards for display upon a motor vehicle registered to him or motor vehicle owned by another person who is transporting him. The physician 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 shall not be required to furnish further medical information about his mobility impairment.

D. A parking placard issued pursuant to this section shall expire on the same date the person's license or identification card issued pursuant to Section 66-5-401 NMSA 1978 expires.

E. The division shall issue two-sided hanger-style parking placards with the following characteristics:

(1) the international symbol of access shall be displayed on both sides of the placard and shall be at least three inches in height, centered on the placard and white on a blue field;

(2) an identification number enabling the division to identify the holder of each placard. The division shall maintain this information in a readily retrievable format, provide it to the governor's committee on concerns of the handicapped and make it available on demand to any law enforcement agency just as it provides vehicle registration and driver's license information;

(3) the date of expiration; and

(4) the division seal or other identification of the issuing authority.

F. Upon written application to the division accompanied by a medical statement from a licensed physician attesting to a temporary disability, a person who has a temporary disability that limits or impairs the ability to walk may be issued a temporary placard for no more than one year. The physician shall provide the division all information and records necessary to issue a temporary placard.

G. For the purpose of obtaining a placard, a person with a "severe mobility impairment" means the person:

(1) cannot walk one hundred feet without stopping to rest;

(2) cannot walk without the use of a brace, a cane, a crutch, assistance from another person, a prosthetic device, a wheelchair or another 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 his ability to walk due to an arthritic, neurologic or orthopedic condition that the person cannot ascend or descend more than ten stair steps.

H. Special registration plates or placards issued to a person with severe mobility impairment by another state or foreign jurisdiction shall be honored until the vehicle is registered or the placard holder establishes residency in this state.

I. All parking placards issued on or after July 1, 1999 shall be issued in accordance with the provisions of this section.

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.

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 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.

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 1999 amendment, effective June 18, 1999, rewrote this section to the extent that a detailed comparison is impracticable.

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 disabled parking space 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 disabled parking space 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.

ANNOTATIONS

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 permits and plates; 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. Except for temporary demonstration plates, temporary permits 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 temporary permit is not visible or readable from that position, in which case, the temporary permit shall be displayed in such a manner that it is clearly visible from the rear or left side of the vehicle. Temporary demonstration plates shall be displayed as provided for in Subsection A of this section.

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 tab or 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, tab or 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.

History: 1953 Comp., § 64-3-18, enacted by Laws 1978, ch. 35, § 38; 1985, ch. 51, § 1; 1998, ch. 48, § 4.

ANNOTATIONS

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.

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.

Where license plates were fastened to the car only at one corner of the plates, were loose, dangling and swinging, in violation of 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, 1998-NMCA-029, 124 N.M. 661, 954 P.2d 93, cert. denied, 124 N.M. 589, 953 P.2d 1087 (1998).

No exception is made for vehicles of nonresidents. United States v. Bongiorno, 444 F.2d 120 (10th Cir. 1971).

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 monthly increments, but after the initial registration adjustment period, renewals of registration shall be for a full twelve-month period;

(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 beginning of the registration period to which the owner has been assigned. 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. To this end, the department, by whatever system or device the secretary may direct and which 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 twelve-month 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 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 [66-1-1 NMSA 1978] 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 generally, see 66-2-11 NMSA 1978.

For disposition of fees generally, see 66-6-23 NMSA 1978.

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.

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 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.

1995 amendments. - Virtually identical amendments to this section were enacted by Laws 1995, ch. 44, § 2, approved April 5, 1995 and effective July 1, 1995, and Laws 1995, ch. 135, § 12, approved April 5, 1995 and effective January 1, 1996, which, in the section heading, deleted "and prorated vehicles" following "trailers" and made a minor stylistic change; 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. This section is set out as amended by Laws 1995, ch. 135, § 12. See 12-1-8 NMSA 1978.

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). 1961-62 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. 1961-62 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 proportional registration or registration under reciprocal agreement with another state, shall register with the department on a calendar year basis. Registration for all such vehicles expires on December 31 of each year. Application for renewal of registration shall be submitted to the department between October 1 and December 31 of the expiring registration year. Vehicle identification for the ensuing registration year shall not be honored before December 15 of the expiring registration year.

History: 1953 Comp., § 64-3-20, enacted by Laws 1978, ch. 35, § 40; 1993, ch. 328, § 2.

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 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. Registrations of vehicles, motorcycles or trucks with a declared gross weight of twenty-six thousand pounds or less may be for a period of up to two years; provided, the extended registration period shall begin on the first day of any month and expire on the last day of any month.

B. The fee for an extended registration period shall be the fee for a registration for one year divided by four and multiplied by the number of calendar quarters in the registration period with any fraction of a quarter year to be considered a full quarter.

C. If a registration expires by operation of law prior to the end of the extended registration period, no portion of the registration fee shall be refunded.

D. If the owner of a vehicle that is registered for an extended registration period sells, transfers or assigns title or interest to the vehicle and applies to have the registration number assigned to another vehicle, upon assignment, a credit amount representing the unexpired portion of the registration fee plus an administrative fee to be determined by the department shall be applied, on a pro rata basis, to the registration fee for the vehicle to which the registration number is assigned.

History: Laws 1988, ch. 94, § 1; 1995, ch. 44, § 3; 2001, ch. 141, § 1.

ANNOTATIONS

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.

The 2001 amendment, effective June 15, 2001, inserted "credit for unexpired portion of fee" in the section heading; and added Subsection D.

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 combination gross 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 combination gross 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 the fee therefore [therefor].

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.

ANNOTATIONS

Cross references. - For weight and size limitations generally, see 66-7-401 to 66-7-416 NMSA 1978.

Bracketed material. - The bracketed material in Paragraph A(2) was inserted by the compiler. It was not enacted by the legislature, and it is not a part of the law.

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, shall move 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.

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 thereafter changed by marriage or otherwise, he 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.

ANNOTATIONS

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, 100 N.M. 752, 676 P.2d 829 (Ct. App. 1984).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 85 to 89.

Registration as affected by name used to identify owner, 47 A.L.R. 1103.

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 substitute 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 68, 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.

ANNOTATIONS

Cross references. - For issuance of nonnegotiable certificates of title, see 66-3-11 NMSA 1978.

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 repeals 66-3-26 NMSA 1978, as enacted by Laws 1978, ch. 35, § 46, relating to regulations governing change of engines, effective July 1, 1989. For provisions of former section, see 1984 Replacement Pamphlet.

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 director of motor vehicles, the owner of a horseless carriage may receive a certificate of title and permanent registration upon:

(1) payment of a ten-dollar ($10.00) fee; 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 director 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 director 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 director, 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. Any person violating this section is guilty of a misdemeanor.

History: 1953 Comp., § 64-3-27, enacted by Laws 1978, ch. 35, § 47.

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.

66-3-28. State government registration plates; issuance approved.

No state government registration plates shall be provided to a state agency unless approved 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 except the legislative and judicial branches, public schools and institutions of higher education.

History: Laws 1994, ch. 119, § 14; 1995, ch. 161, § 8.

ANNOTATIONS

Cross references. - For Transportation Services Act, see Chapter 15, Article 8 NMSA 1978.

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

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".

Recompilations. - Laws 1998 (1st S.S.), ch. 10, § 10, recompiles former 65-1-25.2 NMSA 1978, relating to intrastate livestock haulers, as 66-3-29 NMSA 1978, effective July 1, 1998.

PART 2
TRANSFER OF TITLE OR INTEREST

66-3-101. Transfer by owner; recordation of mileage of vehicle.

A. When the owner of a registered vehicle sells, transfers or assigns his title or interest in, and delivers the possession of, the vehicle to another, the registration of the vehicle shall expire, except as provided in Subsection B of this section. 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. The owner shall remove the registration plates from the vehicle except as provided in Subsection C of this section and, within thirty days from the date of transfer, forward the registration plates to the division or its authorized agent to be destroyed or may apply to

have the plate and the registration number assigned to another vehicle, as provided for in Section 66-3-104 NMSA 1978, upon the payment of the difference, if any, between the paid registration fee and the new registration fee 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 the transfer fee provided by law and subject to the rules of the division.

C. When the owner of a vehicle bearing a current registration plate of a foreign state, territory or country transfers or assigns his 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.

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.

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 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.

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".

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 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, 74 N.M. 348, 393 P.2d 457 (1964); Clovis Fin. Co. v. Sides, 72 N.M. 17, 380 P.2d 173 (1963).

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, 74 N.M. 348, 393 P.2d 457 (1964).

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. 1959-60 Op. Att'y Gen. No. 59-146.

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., 78 N.M. 395, 432 P.2d 106 (1967).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 30 to 37.

Purchaser's title as affected by failure to comply with statute upon sale of automobile, 52 A.L.R. 701, 63 A.L.R. 688, 94 A.L.R. 948, 58 A.L.R.2d 1351.

Statute as to endorsement and transfer of certificate of title or registration as exclusive method of transferring title, 114 A.L.R. 697.

Failure to assign certificate of title as making sale void, 136 A.L.R. 814.

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.

66-3-102. 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. 1961-62 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. Failure to apply for transfer of registration and issuance of a new certificate of title within thirty days from the date of transfer 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.

History: 1953 Comp., § 64-3-103, enacted by Laws 1978, ch. 35, § 50; 1989, ch. 318, § 8.

ANNOTATIONS

Cross references. - For horseless carriage registration, see 66-3-27 NMSA 1978.

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, 74 N.M. 348, 393 P.2d 457 (1964); Clovis Fin. Co. v. Sides, 72 N.M. 17, 380 P.2d 173 (1963).

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., 75 N.M. 313, 404 P.2d 137 (1965).

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 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 of appeals answered 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, 74 N.M. 348, 393 P.2d 457 (1964).

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. 1953-54 Op. Att'y Gen. No. 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. 1953-54 Op. Att'y Gen. No. 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 1995 amendment, effective July 1, 1995, substituted "class" for "type" at the end of the second sentence and made minor stylistic changes.

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 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.

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.

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. - 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.

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 transfer; 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 transfer 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 transfer fees from the purchaser upon delivery of the vehicle and shall, within thirty days, pay all transfer 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 subsection, 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 transfer of registration and issuance of a new certificate of title within thirty days from the date of transfer subjects the transferee 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.

ANNOTATIONS

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., 75 N.M. 313, 404 P.2d 137 (1965).

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., 75 N.M. 313, 404 P.2d 137 (1965).

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 repeals 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 1989 Replacement Pamphlet. 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 repeals 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 provisions of former section, see 1984 Replacement Pamphlet. 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 such manufacturer shall transfer 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. Such certificate shall be signed by the manufacturer and shall specify that the vehicle described therein has been transferred to the dealer named therein, and that such transfer is the first transfer of the vehicle in ordinary trade and commerce.

B. 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.

C. 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 66-6-27 [repealed] NMSA 1978.

History: 1953 Comp., § 64-3-118, enacted by Laws 1978, ch. 35, § 65.

ANNOTATIONS

Compiler's notes. - Section 66-6-27 NMSA 1978, referred to in Subsection C, was repealed by Laws 1988, ch. 73, § 56. For present comparable provisions, see 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 or motor vehicle to be dismantled.

A. Except as provided in Sections 66-3-114 through 66-3-121 NMSA 1978, any person who sells, gives away, trades or disposes of any vehicle or motor 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 such vehicle or motor vehicle to the recipient and shall deliver the same to the recipient. A licensed dismantler receiving any registration plates shall either return them to the owner upon demand or surrender them, within five days of receiving the plates, to the division.

B. Except as provided in Sections 66-3-114 through 66-3-121 NMSA 1978, no person shall dismantle or destroy a vehicle or motor vehicle unless he possesses a certificate of title or other proof of ownership of the vehicle or motor vehicle and completes and sends in the dismantler's notification form to the motor vehicle division and any law enforcement agency designated by the motor vehicle division for that purpose.

C. Any person licensed under Section 66-4-1 NMSA 1978 may take possession of an abandoned motor vehicle provided:

(1) he obtains at the time of acquisition a written clearance form from a law enforcement agency mentioned in Section 66-3-121 NMSA 1978;

(2) he, within five days after acquisition of said vehicle or motor vehicle, requests from the motor vehicle division an official printout indicating the names and addresses of all lienholders and owners of record. If the vehicle or motor vehicle has out-of-state license plates or the licensee has some other reason to believe that the vehicle or motor vehicle is registered in a state other than New Mexico, he must request the same information from the appropriate agency of that state;

(3) he, within five days after receiving the names and addresses of all lienholders and owners of record, informs them by certified mail, return receipt requested, of his possession of the vehicle or motor vehicle and all charges against the vehicle or motor vehicle, if any, and of his intent to dispose of said vehicle if no claim be made within thirty days after the delivery of the letter;

(4) in those cases where neither the motor vehicle 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 vehicle or motor vehicle once he has properly completed a dismantler's notification form for the vehicle or motor vehicle and has mailed one copy of the form to the motor vehicle division, and one copy of the form to the law enforcement agency designated by the motor vehicle division for that purpose, together with a copy of the correspondence with either the motor vehicle 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, he shall properly complete a dismantler's notification form for the vehicle or motor vehicle and send one copy of the form together with any correspondence with the motor vehicle 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 he has complied with provisions of this section and he has not received during the thirty-day period following notification any valid claim against the vehicle or motor vehicle in question, or while a valid claim has been made, he has not received within sixty days following such notification payment for fees connected with towing and storage of the vehicle or motor vehicle in question. 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;

(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 vehicle or motor 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 vehicle or motor vehicle; and

(8) upon complying with the above conditions and waiting the required period of time, such a vehicle or motor vehicle shall be deemed the property of the dismantler for dismantling or salvage purposes and he shall not be required to take further action under the lien laws of this state unless the vehicle or motor 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 such a vehicle or motor vehicle.

History: 1953 Comp., § 64-3-119, enacted by Laws 1978, ch. 35, § 66.

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 generally, see 66-2-11 NMSA 1978.

For penalty for violation of this section, see 66-4-9 NMSA 1978.

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 division of motor vehicles), 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 in this section was inserted by the compiler. It was not enacted by the legislature and is not part of the law. For references

to state corporation commission being construed as references to the public regulation commission, see 8-8-21 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.

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, send copies of the dismantler's notification form as provided for in Section 66-3-124 NMSA 1978 to the following persons:

A. one copy 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, 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;

B. one copy by certified mail within thirty days of acquisition to the local law enforcement agency designated by the department. The agency must 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; 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 his possession or until the vehicle is destroyed.

History: 1953 Comp., § 64-3-123, enacted by Laws 1978, ch. 35, § 70; 1991, ch. 160, § 8.

ANNOTATIONS

Cross references. - For the penalty for violation of this section, see 66-4-9 NMSA 1978.

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.

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.

ANNOTATIONS

Cross references. - For the penalty for violation of this section, see 66-4-9 NMSA 1978.

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.

A person licensed under the provisions of Sections 66-4-1 through 66-4-9 NMSA 1978 may, no earlier than thirty days after mailing 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 or motor vehicle purchased in accordance with the provisions of Sections 66-4-1 through 66-4-9 NMSA 1978; provided, however, dismantling of the vehicle or motor vehicle may proceed immediately upon the mailing of the dismantler's notification form.

History: 1953 Comp., § 64-3-125, enacted by Laws 1978, ch. 35, § 72; 1989, ch. 318, § 10.

ANNOTATIONS

Cross references. - For the penalty for violation of this section, see 66-4-9 NMSA 1978.

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; place of sale; advertising; penalty.

A. No person not a dealer making a casual sale of his own motor vehicle duly registered to him shall sell the vehicle or offer or display the motor vehicle for sale at any location other than his current residence, place of employment, or at any site where the seller of the motor vehicle has obtained prior written permission from the land owner.

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.

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 generally, 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 apply older, similar provision constitutes harmless error. - Where the supreme court inadvertently overlooks the fact that a new statute on registration of lien interests in motor vehicles had not gone into effect at the time the decision was made, but there existed at the time a substantially similar statute, the failure to apply the latter constitutes harmless error and is not valid grounds for rehearing. Fulwiler v. Traders & Gen. Ins. Co., 59 N.M. 366, 285 P.2d 140 (1955).

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, 78 N.M. 5, 427 P.2d 890 (1967).

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, 72 N.M. 17, 380 P.2d 173 (1963).

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 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, 78 N.M. 5, 427 P.2d 890 (1967).

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, 82 N.M. 30, 474 P.2d 712 (Ct. App. 1970).

Informing the sheriff not constructive notice. - Notice of unrecorded conditional sale contract, to be effectual, must be brought home to the execution-creditor, not merely to the sheriff. Riggs v. Gardikas, 78 N.M. 5, 427 P.2d 890 (1967).

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, 82 N.M. 30, 474 P.2d 712 (Ct. App. 1970).

The motor vehicle division should accept for filing all instruments, with or without acknowledgments appearing thereon, filed pursuant to 64-5-1 and 64-5-2, 1953 Comp. (similar to this section and 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. 1961-62 Op. Att'y Gen. No. 62-30.

Certified photocopy of instrument creating lien is valid for filing. 1963-64 Op. Att'y Gen. No. 63-56.

Instrument not constituting original copy. - An instrument which is a photocopy or carbon copy of another instrument submitted for filing and which bears a signature thereon which is shown to be a photocopy or carbon copy, would not constitute an instrument which is an original copy within the meaning and contemplation of 64-5-1, 1953 Comp. (similar to this provision), and the department of motor vehicles (now motor vehicle division) should limit its acceptance of instruments evidencing liens or encumbrances and of such nature to those bearing a certificate of a notary public showing the document to be a true and correct copy of the original. 1963-64 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). 1953-54 Op. Att'y Gen. No. 5846.

Chattel mortgages and instruments having effect of placing a lien on personal property are required to be in writing. Clovis Fin. Co. v. Sides, 72 N.M. 17, 380 P.2d 173 (1963).

Certificate only evidence thus other proof can show ownership. - Title 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 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, 74 N.M. 348, 393 P.2d 457 (1964); Clovis Fin. Co. v. Sides, 72 N.M. 17, 380 P.2d 173 (1963).

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, 74 N.M. 348, 393 P.2d 457 (1964).

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).

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 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. Laws 1996, ch. 78 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 15, 1996, 90 days after adjournment of the legislature.

Section provides exclusive method of perfection. - This section specifically provides that the method provided under 64-5-1 and 64-5-2, 1953 Comp. (similar to 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. 1961-62 Op. Att'y Gen. No. 62-30.

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 64-5-2, 1953 Comp. (similar to this section). Diamond Trailer Sales Co. v. Munoz, 72 N.M. 190, 382 P.2d 185 (1963).

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 et seq.) do not apply to the perfection of liens, encumbrances or title retention creating a security interest in motor vehicles. 1961-62 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 64-5-1 and 64-5-2, 1953 Comp. (similar to 66-3-201 and this section, respectively) and which instruments create and evidence a lien or encumbrance or title retention upon motor vehicles required to be registered. 1961-62 Op. Att'y Gen. No. 62-30.

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, 82 N.M. 30, 474 P.2d 712 (Ct. App. 1970).

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, 82 N.M. 30, 474 P.2d 712 (Ct. App. 1970).

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 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, 71 N.M. 271, 377 P.2d 681 (1962).

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

I. General Consideration.
II. Employment or Residence Within State.
III. Carrying on Business.
IV. Military Personnel.

I. GENERAL CONSIDERATION.

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.

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, 47 N.M. 182, 138 P.2d 1006 (1943).

No certain limitations relative to use of highways by nonresidents. - In this state, residency for the accomplishment or the eligibility for acting within certain limitations of the laws has been made definite, such as is exampled by the requirements for the right of franchise, use of the civil courts in domestic matters and the enjoyment of public employment. There is no such specific guide relative to limited use of New Mexico highways by nonresidents. 1957-58 Op. Att'y Gen. No. 58-191.

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. 1957-58 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.

Must pay excise tax if registered. - Owners of foreign vehicles, who are required to register such vehicles pursuant to the provisions of 64-6-1, 1953 Comp. (similar to this section) must pay the excise tax required by 64-11-15, 1953 Comp. (similar to former 66-6-27 NMSA 1978). 1959-60 Op. Att'y Gen. No. 60-11.

Nonresident motorist may be cited as misdemeanant if vehicle unregistered. - 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 64-3-11, 1953 Comp. (similar to 66-3-13 NMSA 1978) 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 64-6-1A, 1953 Comp. (similar to this section). 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. 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 64-6-1A. 1966 Op. Att'y Gen. No. 66-62.

Systematic check may not 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.

Rental motor vehicles and rental trailers come within the provisions of 64-6-1, 1953 Comp. (similar to this section). 1963-64 Op. Att'y Gen. No. 63-137.

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.

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. 1961-62 Op. Att'y Gen. No. 62-113.

Once intent to become resident manifest, registration requirements must be met. - Under the existing valid legislative enactments that any nonresident or otherwise foreign vehicle may be operated in New Mexico for an indefinite period of time limited only by the period of valid registration as provided for in the state or country in which the concerned owner does, as a matter of law, reside and further in keeping herewith, the circumstances as would establish or invoke a required registration in New Mexico can only be determined by a declaration of such by the newcomer or by a manifestation of an intention to become a resident in New Mexico 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. 1957-58 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. 1959-60 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. 1959-60 Op. Att'y Gen. No. 59-215.

Nonresident truckers cannot avoid necessity of registration simply because on weekends the vehicles were driven to Texas. 1961-62 Op. Att'y Gen. No. 62-113.

Period not tolled by short absence. - The purpose of 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. 1959-60 Op. Att'y Gen. No. 59-197; 1963-64 Op. Att'y Gen. No. 63-137.

Intentional disruption of period not permitted. - A nonresident motorist may not take his vehicle out of state for short periods of time merely to disrupt the running of the consecutive 30-day period of Subsection B of 64-6-1, 1953 Comp. (similar to Subsection D of this section). 1963-64 Op. Att'y Gen. No. 63-137.

Nonresident trucker may not relieve himself of requirement of registration of his truck imposed by 64-6-1, 1953 Comp. (similar to this section), as amended, by removing his truck from the state for short intervals. 1959-60 Op. Att'y Gen. No. 59-71.

III. CARRYING ON BUSINESS.

Out-of-state leased vehicles subject to registration requirements. - Subsection D of 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.

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. 1953-54 Op. Att'y Gen. No. 6037.

Carrying on business within state subjects owner to registration requirements. - Subsection E of 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.

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 taxation of their personal property, including registration of and excise tax on their motor vehicle and personal property. This is true even though the state of residence and domicile does not exercise its right of taxation. 1959-60 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 64-6-1, 1953 Comp. (similar to this section). 1957-58 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, a community or noncommunity property state, purchased during coverture, is not required to register his motor vehicle in New Mexico under the provisions of 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. 1957-58 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) 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 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 64-6-1E, 1953 Comp. (similar to this section). 1975 Op. Att'y Gen. No. 75-43.

66-3-302. Caravan tax.

A. No person or any employee, agent or representative of the person shall 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 vehicles are being transported for the purpose of delivery to any purchaser of the vehicles 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 upon application on the form prescribed by the department and upon payment of a fee of seven dollars fifty cents ($7.50) for each vehicle transported by use of its own power and a fee of five dollars ($5.00) 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. 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 and, if issued, shall be at all times displayed on each vehicle being transported. No such permit, tag or placard shall 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. This tax 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 motor transportation division of the department and the New Mexico state police are 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.

ANNOTATIONS

The 1995 amendment, effective June 16, 1995, rewrote the section to the extent that a detailed comparison is impracticable.

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. 1957-58 Op. Att'y Gen. No. 58-208.

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).

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

Compiler's notes. - For attorney general's opinions concerning registration by military personnel, see analysis line IV in the notes to 66-3-301 NMSA 1978.

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 special 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 wrecker of vehicles or 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 special plate issued to the dealer or wrecker of vehicles as provided in Section 66-3-402 NMSA 1978. This subsection shall not be construed as limiting the use of temporary permits issued to dealers pursuant to Section 66-3-6 NMSA 1978.

B. The provisions of this section do not apply to work or service vehicles used by a wrecker of vehicles or 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 [66-1-1 NMSA 1978], but is not required to be titled pursuant to the provisions of that code. When any 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 special dealer plates pursuant to this section, a dealer or wrecker may register and title a vehicle included in a dealer's inventory in the name of the dealer or wrecker 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.

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 special plates for radio station licensees, see 66-3-417 NMSA 1978.

For fees for special plates, see 66-6-17 NMSA 1978.

For suspension or revocation of special plates, see 66-8-5 NMSA 1978.

The 1998 amendment, effective July 1, 1998, rewrote this section to the extent that a detailed comparison is impracticable.

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 special 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 special 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.

ANNOTATIONS

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.

Internal Revenue Code of 1986. - The Internal Revenue Code of 1986 is codified throughout Title 26 of the United States Code.

66-3-402. Application for special dealer plates.

A. Any wrecker of vehicles or dealer may apply to the department upon the appropriate form for one or more special dealer plates. The applicant shall submit proof of his status as a bona fide wrecker of vehicles or dealer as may reasonably be required by the department.

B. The maximum number of special 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. The maximum number of special dealer plates for which a wrecker or dismantler of new or used motor vehicles or motorcycles may apply pursuant to this section shall be:

(1) for a wrecker or dismantler who wrecked or dismantled three or more but fewer than fifty vehicles, one plate;

(2) for a wrecker or dismantler who wrecked or dismantled fifty or more but fewer than one hundred vehicles, three plates;

(3) for a wrecker or dismantler who wrecked or dismantled one hundred or more but fewer than five hundred vehicles, five plates; and

(4) for a wrecker or dismantler who wrecked or dismantled five hundred vehicles or more, ten plates.

D. Any dealer or wrecker shall be entitled to five plates in the first calendar year in which he begins business. Any dealer or wrecker 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 he is first licensed to do business.

E. The department upon granting any such application shall issue to the applicant a certificate containing the applicant's name and address and the numbers of the special dealer plates assigned to the applicant.

History: 1953 Comp., § 64-3-402, enacted by Laws 1978, ch. 35, § 81; 1998, ch. 48, § 10.

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 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 special dealer plates.

Every special 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 special dealer plate was issued may apply to the department for a new plate or validating sticker for the ensuing year. Renewal of all special dealer plates shall be on or before December 31. It is a misdemeanor pursuant to the Motor Vehicle Code [66-1-1 NMSA 1978] to operate a vehicle with a special dealer plate that has expired.

History: 1953 Comp., § 64-3-403, enacted by Laws 1978, ch. 35, § 82; 1998, ch. 48, § 11.

ANNOTATIONS

The 1998 amendment, effective July 1, 1998, rewrote this section to the extent that a detailed comparison is impracticable.

66-3-404. Special vehicle-business plates not transferable.

A. Special vehicle-business plates issued to a manufacturer, a wrecker of vehicles or dealer are not transferable.

B. Whenever the holder of special vehicle-business plates ceases operation for any reason, the current special vehicle-business plates issued to him shall be surrendered to the division.

History: 1953 Comp., § 64-3-404, enacted by Laws 1978, ch. 35, § 83; 1989, ch. 318, § 11.

ANNOTATIONS

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 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.

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.

"Lieutenant-governor's aide" or "advisor" cannot appear on plate. - The department of motor vehicles (now division of motor vehicles) 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 plates for recreational vehicles.

All recreational vehicles registered in New Mexico shall carry a special registration plate designating them as such. The color and design of such plates shall be at the discretion of the director of the division.

History: 1953 Comp., § 64-3-408, enacted by Laws 1978, ch. 35, § 87.

66-3-409. Special registration plates; medal of honor recipients.

A. The division 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 division that he 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 represent himself to be a medal of honor recipient in order to be eligible to be issued special registration plates pursuant to this section when he is in fact not such a recipient. Any person who violates the provisions of this subsection is guilty of a petty 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.

ANNOTATIONS

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.

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 1995 amendment, effective June 16, 1995, deleted former Subsection C which barred issuance of special registration plates under this section after July 1, 1995.

66-3-410. Repealed.

ANNOTATIONS

Repeals. - Laws 1985, ch. 148, § 2 repeals 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 provisions of former section, see 1983 Cumulative Supplement. 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 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".

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 1995 amendment, effective June 16, 1995, deleted former Subsection D which barred issuance of special registration plates under this section after July 1, 1995.

66-3-412. Special registration plates; one hundred percent disabled veterans; submission of proof; penalty.

A. The department shall issue distinctive registration plates for up to two vehicles, including motorcycles, to a person who is a veteran of the armed forces of the United States, as defined in Section 28-13-7 NMSA 1978, and was one hundred percent disabled while serving in the armed forces of the United States, upon the submission by the person of proof satisfactory to the department that he was one hundred percent 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 a special registration plate 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 Sections 66-3-406, 66-3-409, 66-3-411 and 66-3-412.1 NMSA 1978 shall be issued only one special registration plate of his choice.

B. No person shall falsely represent himself to have been one hundred percent 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 he in fact was not one hundred percent disabled while serving in the armed forces of the United States.

C. A person who violates the provisions of Subsection B of this section is guilty of a misdemeanor.

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.

ANNOTATIONS

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.

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 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 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 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".

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, as defined in Section 28-13-7 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 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 he desires to obtain a special motorcycle registration plate. He will have first priority on that plate for each subsequent year that he 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; or

(20) Desert Storm 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.

History: Laws 2001, ch. 243, § 1.

ANNOTATIONS

Effective dates. - Laws 2001, ch. 243, § 2 makes the act effective July 1, 2001.

66-3-413. Special registration plates.

A. The division 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 division that he is currently a member of the guard. No fee shall be collected for issuance of a special registration plate pursuant to this section.

B. No person shall falsely represent himself to be 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 he in fact is not a current member of the New Mexico national guard.

C. Any person who violates the provisions of Subsection B of this section is guilty of a misdemeanor.

History: Laws 1980, ch. 45, § 1; 1987, ch. 268, § 23.

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 he has been awarded that medal. 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 represent himself to be a purple heart veteran so as to be eligible to be issued special plates pursuant to this section when he 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.

ANNOTATIONS

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.

The 1993 amendment, effective July 1, 1993, added Subsection D.

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 1997 amendment, 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. Laws 1997, ch. 158 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature.

66-3-415. Special registration plates for Pearl Harbor survivors.

A. The division 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 division 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 division 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. Any 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. No person shall falsely represent himself to be 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. Any person who violates the provisions of Subsection F of this section is guilty of a misdemeanor 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 less than one year or both.

History: 1978 Comp., § 66-3-415, enacted by Laws 1989, ch. 162, § 1; 1993, ch. 180, § 6; 1995, ch. 8, § 5.

ANNOTATIONS

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.

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.

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 director 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 director 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 director 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

director 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 director, at which time the seller or the buyer of the motor vehicle is entitled to receive a registration plate for the motor vehicle. 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.

ANNOTATIONS

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.

Repeals. - Laws 1985, ch. 148, § 2 repeals 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. For provisions of former section, see 1984 Replacement Pamphlet.

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 New Mexico veterans' service commission by annually purchasing such license plates in addition to paying the regular motor vehicle registration fees.

History: Laws 1990, ch. 46, § 1.

66-3-419. Special registration plates for 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, as defined in Section 28-13-7 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 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) 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; or

(20) Desert Storm 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 director of veterans' affairs 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.

History: Laws 1990, ch. 46, § 2; 1993, ch. 180, § 7; 1995, ch. 32, § 1; 1999, ch. 23, § 1.

ANNOTATIONS

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.

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 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.

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.

66-3-421. Special registration plates; New Mexico rangers and New Mexico mounted patrol; submission of proof; penalty.

A. The division 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 division that he 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. No person shall falsely represent himself to be 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 he in fact is not a New Mexico ranger or a member of the New Mexico mounted patrol.

C. Any person eligible for a special registration plate under this section shall only be eligible for one such plate.

D. Any person who violates the provisions of Subsection B of this section is guilty of a misdemeanor.

History: Laws 1993, ch. 180, § 8.

66-3-422. Special registration plates for firefighters and volunteer firefighters.

A. The department shall issue special registration plates to any person employed as a New Mexico firefighter, upon the submission by the person of proof satisfactory to the division that he 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 any person who is an active volunteer firefighter with a volunteer fire department recognized by the state fire marshal's office upon the submission by the person of proof satisfactory to the department that he 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. No person shall represent himself to be a New Mexico firefighter or volunteer firefighter if he is, in fact, not 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 petty misdemeanor and shall be sentenced pursuant to Section 31-19-1 NMSA 1978.

E. 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 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 shall be 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 motor vehicle suspense fund for distribution in accordance with Section 66-6-23 NMSA 1978.

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 the firefighter holding a special plate ceases to be employed as a firefighter or serve as an active volunteer firefighter, he 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. When a firefighter holding a special plate retires from his position as firefighter, he may retain the special plate.

History: Laws 1998, ch. 21, § 1; 2000, ch. 70, § 1.

ANNOTATIONS

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. Because Laws 2003, ch. 212 was approved later on April 6, 2003, this section is 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. (Effective January 1, 2004.).

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 makes this section effective on January 1, 2004.

Compiler's notes. - This section was enacted as 66-3-424.1, but was renumbered to account for enactment of a similar section number by an earlier act.

66-3-424.2. Standardized special registration plate for retired New Mexico state police officers. (Effective January 1, 2004.).

A. The division 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 division 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 represent himself to be a retired New Mexico state police officer if that person is not in fact 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 petty misdemeanor and shall be sentenced pursuant to Section 31-19-1 NMSA 1978.

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 division 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 division and shall be appropriated to the division 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 plates for retired New Mexico state police officers. The secretary shall approve and issue a separate and distinctive logo 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. 174, § 2.

ANNOTATIONS

Effective dates. - Laws 2003, ch. 174, § 4 makes this section effective on January 1, 2004.

Compiler's notes. - This section was originally enacted as 66-3-424.1 NMSA 1978, but it was renumbered by the compiler to accommodate a similarly numbered section enacted by an earlier 2003 act.

66-3-424.3. Special pet care registration plates. (Effective January 1, 2004.).

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 he wishes to retain and renew his 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 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. 175, § 2.

ANNOTATIONS

Effective dates. - Laws 2003, ch. 175, § 4 makes this section effective on January 1, 2004.

Compiler's notes. - This section was originally enacted as 66-3-424.1 NMSA 1978, but it was renumbered by the compiler to accommodate a similarly numbered section enacted by an earlier 2003 act.

66-3-424.4. Standardized special registration plate for retired members of the New Mexico national guard. (Effective January 1, 2004.).

A. The division 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 division that the person is a retired member of the guard.

B. A person shall not represent himself to be 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 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 division 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 division and is appropriated to the division 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.

ANNOTATIONS

Effective dates. - Laws 2003, ch. 176, § 3 makes the act effective on January 1, 2004.

Compiler's notes. - This section was originally enacted as 66-3-424.1 NMSA 1978, but it was renumbered by the compiler to accommodate a similarly numbered section enacted by an earlier 2003 act.

66-3-424.5. Special registration plates for New Mexico members of the fraternal order of police. (Effective January 1, 2004.).

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. No person shall represent himself to be a New Mexico member of the fraternal order of police if he 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 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 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, he 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.

History: 1978 Comp., § 66-3-424.1, enacted by Laws 2003, ch. 177, § 2.

ANNOTATIONS

Effective dates. - Laws 2003, ch. 177, § 3 makes the act effective on January 1, 2004.

Compiler's notes. - This section was originally enacted as 66-3-424.1 NMSA 1978, but it was renumbered by the compiler to accommodate a similarly numbered section enacted by an earlier 2003 act.

66-3-424.6. Special wildlife artwork registration plates; procedures; fee. (Effective January 1, 2004.).

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 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 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.

ANNOTATIONS

Effective dates. - Laws 2003, ch. 178, § 3 makes the act effective on January 1, 2004.

Compiler's notes. - This section was originally enacted as 66-3-424.1 NMSA 1978, but it was renumbered by the compiler to accommodate a similarly numbered section enacted by an earlier 2003 act.

66-3-424.7. Registration plates for members of the civil air patrol, New Mexico wing. (Effective January 1, 2004.).

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 he 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 represent himself to be 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 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 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.

ANNOTATIONS

Effective dates. - Laws 2003, ch. 179, § 3 makes the act effective on January 1, 2004.

Compiler's notes. - This section was originally enacted as 66-3-424.1 NMSA 1978, but it was renumbered by the compiler to accommodate a similarly numbered section enacted by an earlier 2003 act.

66-3-424.8. Special route 66 commemorative registration plate. (Effective January 1, 2004.).

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

Effective dates. - Laws 2003, ch. 180, § 3 makes this section effective on January 1, 2004.

Compiler's notes. - This section was originally enacted as 66-3-424.1 NMSA 1978, but it was renumbered by the compiler to accommodate a similarly numbered section enacted by an earlier 2003 act.

66-3-424.9. Standardized special registration plate for retired firefighters. (Effective January 1, 2004.).

A. The division 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 division that the person has retired from active employment as a firefighter.

B. A person shall not represent himself to be a retired New Mexico firefighter if he 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 petty misdemeanor and shall be sentenced pursuant to Section 31-19-1 NMSA 1978.

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 shall be 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.

ANNOTATIONS

Effective dates. - Laws 2003, ch. 181, § 3 makes the section effective on January 1, 2004.

Compiler's notes. - This section was originally enacted as 66-3-424.1 NMSA 1978, but it was renumbered by the compiler to accommodate a similarly numbered section enacted by an earlier 2003 act.

66-3-424.10. Special registration plates for armed forces retirees. (Effective January 1, 2004.).

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

Effective dates. - Laws 2003, ch. 197, § 4 makes this section effective on January 1, 2004.

Compiler's notes. - This section was originally enacted as 66-3-424.1 NMSA 1978, but it was renumbered by the compiler to accommodate a similarly numbered section enacted by an earlier 2003 act.

66-3-424.11. Special registration plates for active duty uniform service members. (Effective January 1, 2004.).

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

Effective dates. - Laws 2003, ch. 198, § 4 makes the act effective on January 1, 2004.

Compiler's notes. - This section was originally enacted as 66-3-424.1 NMSA 1978, but it was renumbered by the compiler to accommodate a similarly numbered section enacted by an earlier 2003 act.

66-3-424.12. Special registration plates for search and rescue members. (Effective January 1, 2004.).

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

Effective dates. - Laws 2003, ch. 201, § 4 makes the act effective on January 1, 2004.

Compiler's notes. - This section was originally enacted as 66-3-424.1 NMSA 1978, but it was renumbered by the compiler to accommodate a similarly numbered section enacted by an earlier 2003 act.

66-3-424.13. Standardized special registration plate for retired New Mexico state police officers. (Effective January 1, 2004.).

A. The division 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 division 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. No person shall represent himself to be 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 petty misdemeanor and shall be sentenced pursuant to Section 31-19-1 NMSA 1978.

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 division 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 division and is appropriated to the division 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".

History: 1978 Comp., § 66-3-424.1, enacted by Laws 2003, ch. 211, § 2.

ANNOTATIONS

Effective dates. - Laws 2003, ch. 211, § 3 makes this section effective on January 1, 2004.

Compiler's notes. - This section was originally enacted as 66-3-424.1 NMSA 1978, but it was renumbered by the compiler to accommodate a similarly numbered section enacted by an earlier 2003 act.

66-3-424.14. Special registration plates; New Mexico high school rodeo association. (Effective January 1, 2004.).

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

Effective dates. - Laws 2003, ch. 212, § 3 makes the act effective on January 1, 2004.

Compiler's notes. - This section was originally enacted as 66-3-424.1 NMSA 1978, but it was renumbered by the compiler to accommodate a similarly numbered section enacted by an earlier 2003 act.

PART 6
ANTI-THEFT PROVISIONS

66-3-501. Report of stolen and recovered motor vehicles.

A. Every sheriff, chief of police or peace officer upon receiving reliable information that any vehicle registered under the Motor Vehicle Code [66-1-1 NMSA 1978] 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 unless prior thereto, information has been received of the recovery of the vehicle. Any officer, upon receiving information that any vehicle which he 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 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.

ANNOTATIONS

Cross references. - For the index of stolen or recovered vehicles, see 66-3-8, 66-3-9 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 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, 71 N.M. 271, 377 P.2d 681 (1962).

66-3-502. Reports by owners of stolen and recovered vehicles.

A. The owner, or person having a lien or encumbrance upon a registered vehicle which has been stolen or embezzled, may notify the New Mexico state police of such theft or embezzlement, but in the event of an embezzlement may make such report only after having procured the issuance of a warrant for the arrest of the person charged with such embezzlement.

B. Every owner or other person who has given any such notice shall immediately notify the New Mexico state police of a recovery of such vehicle.

History: 1953 Comp., § 64-3-502, enacted by Laws 1978, ch. 35, § 89.

ANNOTATIONS

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 repeals former 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 sections, see 1994 Replacement Pamphlet.

66-3-504. Unlawful taking of a vehicle or motor vehicle.

A. Any person who takes any vehicle or motor vehicle intentionally and without consent of the owner is guilty:

(1) of a fourth degree felony if the vehicle or motor vehicle has a value of less than two thousand five hundred dollars ($2,500); and

(2) of a third degree felony if the vehicle or motor vehicle has a value of two thousand five hundred dollars ($2,500) or more.

B. The consent of the owner of the vehicle or motor vehicle to its taking shall not in any case be presumed or implied because of the owner's consent on a previous occasion to the taking of the vehicle or motor vehicle by the same or a different person.

C. The district courts are given exclusive jurisdiction to hear and try offenses prescribed under this section.

D. Nothing in this section shall be construed to prohibit the holder of a lien duly recorded with the division from taking possession of a vehicle to which possession the lienholder is legally entitled under the provisions of the instrument evidencing the lien. A holder of a duly recorded lien who takes possession of a vehicle without the knowledge of the owner of the vehicle shall immediately notify the local police authority of the fact that he has taken possession of the vehicle.

History: 1953 Comp., § 64-3-504, enacted by Laws 1978, ch. 35, § 91; 1998, ch. 67, § 2.

ANNOTATIONS

Cross references. - For the penalty for a felony, see 66-8-9 NMSA 1978.

The 1998 amendment, effective July 1, 1998, in Subsection A, substituted "is" for "thereof shall be", deleted "of a felony" following "guilty", and added Paragraphs A(1)

and (2); designated Subsection B, inserted "or motor vehicle" following "vehicle", twice, and redesignated former Subsections B and C as Subsections C and D; in present Subsection C, deleted "hereby" following "are"; and made minor stylistic changes throughout the section.

Double jeopardy. - Defendant's acts of taking truck keys and using them to drive the truck away supported separate convictions for armed robbery and unlawful taking of a vehicle, and his double jeopardy right to be free from multiple punishment was not violated by his sentence for unlawful taking. State v. McGruder, 1997-NMSC-023, 123 N.M. 302, 940 P.2d 150.

Defendant, convicted for unlawfully taking a truck, could not be also be convicted for receiving a stolen vehicle under 66-3-505 NMSA 1978. State v. Martinez-Rodriguez, 2001-NMSC-029, 131 N.M. 47, 33 P.3d 267, cert. denied, 535 U.S. 937, 152 L. Ed. 2d 225, 122 S. Ct. 1317 (2002).

Elements of offense. - Criminal intent is an essential element of unlawful taking of a vehicle. State v. Bachicha, 84 N.M. 397, 503 P.2d 1175 (Ct. App. 1972).

To prove that the defendant committed the crime of unlawfully taking a motor vehicle, the state must prove that he took the vehicle without the owner's consent, in New Mexico, with the requisite criminal intent. State v. Tovar, 98 N.M. 655, 651 P.2d 1299 (1982).

Intent to deprive owner of permanent possession not essential element. - Larceny includes the concept of criminal intent. In addition, it includes an intention to permanently deprive the owner of possession of his property. Such intention, to permanently deprive the owner of possession, is not an essential element of a statute prohibiting the intentional taking of a vehicle without the consent of the owner. State v. Austin, 80 N.M. 748, 461 P.2d 230 (Ct. App. 1969).

Conviction had without presence of intent to permanently deprive possession. - A charge of a violation of 64-9-4A, 1953 Comp. (similar to this section), the unlawful taking of a motor vehicle, is not necessarily included in a charge of larceny and, thus, also is not necessarily included in a charge of robbery. The criminal intent required by the crime of larceny is the intent to deprive the owner of his property permanently. However, a violation of 64-9-4A, 1953 Comp. does not require this intent and a conviction under this section may be had without the presence of an intent to permanently deprive the owner of possession. State v. Eckles, 79 N.M. 138, 441 P.2d 36 (1968).

Burglary of vehicle separate offense. - The offense of burglary of a motor vehicle requires an unauthorized entry. Unauthorized entry is not an element of either unlawful taking of a vehicle under this section, or tampering with a vehicle under 66-3-506 NMSA 1978. This difference in the elements of the offenses is sufficient ground to reject the defendant's contention that the statutes are the same and that he should not be charged

with the more general burglary charge. State v. Hernandez, 116 N.M. 562, 865 P.2d 1206 (Ct. App. 1993).

Intent found in larceny not required. - Section 64-9-4, 1953 Comp. (similar to this section) has been expressly held not to require the intent found in larceny to deprive the owner of his property permanently. Kilpatrick v. MIC, 90 N.M. 199, 561 P.2d 472 (1977).

No violation when vehicle loaned. - Section 64-9-4, 1953 Comp. (similar to this section) was not applicable where there was substantial evidence that defendant's taking of a motorcycle was by a loan and, thus, with consent. State v. Gregg, 83 N.M. 397, 492 P.2d 1260 (Ct. App.), cert. denied, 83 N.M. 562, 494 P.2d 975 (1972).

Owner's actions did not constitute consent to taking. - The fact that the owner furnished the keys of the vehicle to the police with the knowledge that they would be given to a potential thief (i.e., defendant) might have facilitated the taking, but that was insufficient to constitute consent to the taking. State v. Ontiveros, 111 N.M. 90, 801 P.2d 672 (Ct. App. 1990).

Stealing and receiving same vehicle. - Because one who steals property cannot be convicted of receiving or retaining the same property, where defendant stole one vehicle he cannot be convicted under this section and 66-3-505 NMSA 1978. State v. Reyes, 2002-NMSC-024, 132 N.M. 576, 52 P.3d 948.

Unlawful taking of vehicle and robbery two separate offenses. - The unlawful taking of a vehicle in violation of 64-9-4A, 1953 Comp. (similar to this section) is not a necessary ingredient of the offense of robbery committed by the theft of moneys by use, or threatened use, of force and violence. Appellant committed two separate and distinct criminal offenses, and the fact that they were committed on the same day, or even that one succeeded the other as part of one episode of criminal activity, did not cause them to merge. State v. Eckles, 79 N.M. 138, 441 P.2d 36 (1968).

Conviction for unlawful taking and acquittal for burglary not inconsistent. - Defendant was convicted of violating 64-9-4, 1953 Comp. (similar to this section) and acquitted of three burglary charges and therefore contended that his conviction should be reversed because of inconsistency. However, since the reason for the acquittals was speculative, the acquittals, even though irreconcilable with the conviction, do not require the conviction to be set aside as a matter of law. State v. Rogers, 80 N.M. 230, 453 P.2d 593 (Ct. App. 1969).

Evidence sufficient. - See State v. Ibarra, 116 N.M. 486, 864 P.2d 302 (Ct. App. 1993), cert. denied, 513 U.S. 1157, 115 S. Ct. 1116, 130 L. Ed. 2d 1080 (1995).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 348 to 350.

Elements of offense defined in "joyriding" statutes, 9 A.L.R.3d 633.

What constitutes theft within automobile theft insurance policy--modern cases, 67 A.L.R.4th 82.

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.

Burglary or breaking and entering of motor vehicle, 72 A.L.R.4th 710.

Joyriding or similar charge as lesser-included offense of larceny or similar charge, 78 A.L.R.5th 567.

61A C.J.S. Motor Vehicles §§ 691 to 700.

66-3-505. Receiving or transferring stolen vehicles or motor vehicles.

Any person who, with intent to procure or pass title to a vehicle or motor vehicle which he knows or has reason to believe has been stolen or unlawfully taken, receives, or transfers possession of the same from or to another, or who has in his possession any vehicle which he knows or has reason to believe has been stolen or unlawfully taken, and who is not an officer of the law engaged at the time in the performance of his duty as such officer, is guilty of a fourth degree felony, and upon conviction shall be sentenced to imprisonment for not less than one nor more than five years, or to the payment of a fine of not more than five thousand dollars ($5,000) or to both such imprisonment and fine in the discretion of the judge.

History: 1953 Comp., § 64-3-505, enacted by Laws 1978, ch. 35, § 92.

ANNOTATIONS

I. General Consideration.
II. Passing Title.

I. GENERAL CONSIDERATION.

Cross references. - For the penalty for felony violation generally, see 66-8-9 NMSA 1978.

For the penalty for violation of a fourth degree felony, see 31-18-15 NMSA 1978.

Primary concern of this section is to prevent the transfer of stolen vehicles. State v. Montano, 93 N.M. 436, 601 P.2d 69 (Ct. App.), cert. denied, 93 N.M. 683, 604 P.2d 821 (1979).

Two separate crimes defined. - Section 64-9-5, 1953 Comp. (similar to this section) defines two separate crimes: (1) taking, receiving or transferring possession of a vehicle

with knowledge or reason to believe it is stolen and with intent to procure or pass title, and (2) unlawful possession of a stolen vehicle. Where defendant was charged with violation of the latter criminal offense which does not include the phrase, "with intent to procure or pass title to a vehicle," refusal of defendant's requested instruction consisting of a verbatim recital of the section was not error since the first part of this section dealing with intent to procure or pass title was not applicable and to have given it might have misled the jury. State v. Wise, 85 N.M. 640, 515 P.2d 644 (Ct. App. 1973).

Double jeopardy. - Defendant, convicted for unlawfully taking a truck under 66-3-504 NMSA 1978, could not be also be convicted for receiving a stolen vehicle. State v. Martinez-Rodriguez, 2001-NMSC-029, 131 N.M. 47, 33 P.3d 267, cert. denied, 535 U.S. 937, 152 L. Ed. 2d 225, 122 S. Ct. 1317 (2002).

Stealing and receiving same vehicle. - Because one who steals property cannot be convicted of receiving or retaining the same property, where defendant stole one vehicle he cannot be convicted under this section and 66-3-504 NMSA 1978. State v. Reyes, 2002-NMSC-024, 132 N.M. 576, 52 P.3d 948.

Applicability of parole authority to indeterminate sentencing. - The parole provisions of the Criminal Sentencing Act, 31-18-12 to 21 NMSA 1978, apply to statutes such as this one which prescribe an indeterminate period of imprisonment, and the trial court did not lack authority to impose the statutory term of parole of one year in addition to the discretionary two years confinement for transferring stolen vehicle. State v. Baker, 116 N.M. 526, 864 P.2d 1277 (Ct. App. 1993).

Substantial discrepancy between fair value and price paid indicates knowledge. - A substantial discrepancy between fair value of an item and the price actually paid for it tends to prove defendant's guilty knowledge and is relevant to that issue. State v. Hanks, 85 N.M. 766, 517 P.2d 750 (Ct. App. 1973).

There was substantial evidence to sustain verdict of guilty of possession of stolen automobile where stolen car was found in defendant's garage, defendant furnished some of the purchase money for the car, purchaser knew it was stolen, defendant was present throughout negotiations and sale of the car, purchase price of the stolen car was very low and the thief lived on defendant's property for a time. State v. Wise, 85 N.M. 640, 515 P.2d 644 (Ct. App. 1973).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 351, 352.

What constitutes concealing stolen motor vehicle within meaning of 18 USCS § 2313, 67 A.L.R. Fed. 572.

Validity, construction, and application of Anti-Car Theft Act (18 USCS § 2119), 140 A.L.R. Fed. 249.

61A C.J.S. Motor Vehicles § 702.

II. PASSING TITLE.

"Title" has broad meaning which includes the transfer of whatever title the transferor possesses. State v. Montano, 93 N.M. 436, 601 P.2d 69 (Ct. App.), cert. denied, 93 N.M. 683, 604 P.2d 821 (1979).

"Title," in this section, is not limited to a "certificate of title" or "transfer of title." State v. Montano, 93 N.M. 436, 601 P.2d 69 (Ct. App.), cert. denied, 93 N.M. 683, 604 P.2d 821 (1979).

"Title" may pass despite noncompliance with code. - "Title" to a vehicle may be transferred, or passed, even though there is a failure to comply with code provisions concerning the certificate of title. State v. Montano, 93 N.M. 436, 601 P.2d 69 (Ct. App.), cert. denied, 93 N.M. 683, 604 P.2d 821 (1979).

Requirement of passing title is met where the title is possession and there is an intentional transfer, whether a sale or a loan. State v. Montano, 93 N.M. 436, 601 P.2d 69 (Ct. App.), cert. denied, 93 N.M. 683, 604 P.2d 821 (1979).

Thief does not have legal title to, or ownership of, a stolen vehicle and neither does the purchaser from a thief. State v. Montano, 93 N.M. 436, 601 P.2d 69 (Ct. App.), cert. denied, 93 N.M. 683, 604 P.2d 821 (1979).

66-3-506. Injuring or tampering with vehicle.

Any person who shall individually or in association with one or more others do any of the following shall be guilty of a misdemeanor and, upon conviction thereof, shall be imprisoned in the county jail for not less than six months nor more than one year:

A. purposely, and without authority from the owner, start or cause to be started the engine of any motor vehicle;

B. purposely and maliciously shift or change the starting device or gears of a standing motor vehicle to a position other than that in which they were left by the owner or driver of said motor vehicle;

C. purposely scratch or damage the chassis, running gear, body, sides, top covering or upholstering of a motor vehicle which is the property of another;

D. purposely destroy any part of a motor vehicle or purposely cut, mash, mark or in any other way, destroy or damage any part, attachment, fastening or appurtenance of a motor vehicle, without the permission of the owner;

E. purposely drain or start the drainage of any radiator, oil tank or gas tank upon a motor vehicle, without the permission of the owner;

F. purposely put any metallic or other substance or liquid in the radiator, carburetor, oil tank, grease cup, oilers, lamps, gas tanks or machinery of the motor vehicle with the intent to injure or damage the same or impede the working of the machinery thereof;

G. maliciously tighten or loosen any bracket, bolt, wire, nut, screw or other fastening on a motor vehicle; or

H. purposely release the brake upon a standing motor vehicle with the intent to injure said machine.

History: 1953 Comp., § 64-3-506, enacted by Laws 1978, ch. 35, § 93.

ANNOTATIONS

Cross references. - For general penalty for misdemeanor violation, see 66-8-7 NMSA 1978.

Criminal damage to property. - Where defendant caused damage in excess of $1000 to a vehicle, the general/specific rule did not apply to prevent a charge of criminal damage to property under 30-15-1 NMSA 1978, on the basis that defendant could only be charged under this section. State v. Arellano, 1997-NMCA-074, 123 N.M. 589, 943 P.2d 1042, cert. quashed, 124 N.M. 589, 953 P.2d 1087 (1998).

Burglary of vehicle separate offense. - The offense of burglary of a motor vehicle requires an unauthorized entry. Unauthorized entry is not an element of either unlawful taking of a vehicle under 66-3-504 NMSA 1978, or tampering with a vehicle under this section. This difference in the elements of the offenses is sufficient ground to reject the defendant's contention that the statutes are the same and that he should not be charged with the more general burglary charge. State v. Hernandez, 116 N.M. 562, 865 P.2d 1206 (Ct. App. 1993).

Arson of automobile. - Section 64-9-6D, 1953 Comp. (similar to this section), is a general statute directed to destroying or damaging an automobile. Section 30-17-5 NMSA 1978 is a specific statute directed to destroying or damaging an automobile by fire or explosion and is the applicable statute to charge one with arson of an automobile having a value in excess of $1,000. State v. Martinez, 91 N.M. 804, 581 P.2d 1299 (Ct. App. 1978).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 354 to 356.

What constitutes offense of "tampering" with "motor vehicle" or contents, 57 A.L.R.3d 606.

61A C.J.S. Motor Vehicles §§ 673, 700.

66-3-507. Altered vehicle identification numbers; contraband.

A. Any person receiving, disposing of, offering to dispose of or having in his possession any vehicle or motor vehicle or motor vehicle engine, shall make adequate inquiry and inspection to determine that no manufacturer's serial number, engine number or other distinguishing number or mark or identification mark or number placed thereon under assignment of the division has been removed, defaced, covered, altered or destroyed.

B. When the inspection of a vehicle or motor vehicle or motor vehicle engine by any law enforcement officer indicates that the manufacturer's serial number, engine number or other distinguishing number or mark or identification mark or number placed thereon under assignment of the division has been removed, defaced, covered, altered or destroyed, that vehicle may be impounded for a period of time not to exceed ninety-six hours, unless part of that time shall fall upon a Saturday, Sunday or a legal holiday in which case the vehicle may be impounded for a period of time not to exceed six days. At the expiration of the stated time period, the vehicle or motor vehicle 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 number or other distinguishing number or mark or identification mark or number placed thereon under assignment of the division has been removed, defaced, covered, altered or destroyed. Within ten days of the issuance of such an order, the law enforcement agency shall cause to have the matter of the vehicle or motor vehicle or motor vehicle engine 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 such filing based on some reasonable requirement for extension of such 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 number or other distinguishing number or mark or identification mark or number placed thereon 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 to be contraband, unless one of the exceptions enumerated in this section applies. At the time the vehicle, motor vehicle or motor vehicle engine 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 in such condition shall not be subject to replevin except by an owner who can trace his ownership of that vehicle, motor vehicle or motor vehicle engine, from the manufacturer by furnishing the court records indicating the identity of all intermediate owners. The law enforcement agency seizing such a vehicle, motor vehicle or motor vehicle engine, shall provide the person from whom it was taken a receipt for such vehicle, motor vehicle or motor vehicle engine.

C. Such vehicle, motor vehicle or motor vehicle engine, shall not be considered contraband when:

(1) it has been determined that such vehicle, motor vehicle or motor vehicle engine has been reported as stolen;

(2) that the vehicle, motor vehicle or motor vehicle engine is recovered in the condition described in Subsection B of this section;

(3) it clearly appears that the true owner is in no way responsible for the altering, concealing, defacing, destroying or alteration;

(4) the true owner obtains an assigned number issued by the division for such vehicle, motor vehicle or motor vehicle engine;

(5) the new assigned numbers have been issued for and placed upon the vehicle, motor vehicle or motor vehicle engine by the division of motor vehicles utilizing a unique numbering system for that purpose; or

(6) a person licensed under the provisions of Sections 214 through 222 [66-4-1 through 66-4-9 NMSA 1978] of this act, when in the course of his business and consistent with the provisions of Section 95 [66-3-508 NMSA 1978] of this act and the rules and regulations promulgated by the division, removes, defaces, covers, alters or destroys the manufacturer's serial or engine number or other distinguishing number or identification mark of a vehicle required to be registered under the Motor Vehicle Code [66-1-1 NMSA 1978], or number placed thereon under assignment of the division.

D. If it is impossible to locate a true owner who meets the provisions of Subsection C of this section to claim such a vehicle, motor vehicle or motor vehicle engine, it may be retained by the law enforcement agency confiscating it, 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.

ANNOTATIONS

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 (2002).

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 66-3-508 NMSA 1978 and, having failed to do so, they had no right to enter the vehicle. State v. Guebara, 119 N.M. 662, 894 P.2d 1018 (Ct. App. 1995).

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. Altering or changing engine or other numbers.

A. No person shall with fraudulent intent deface, remove, cover, destroy or alter the manufacturer's serial or engine number or other distinguishing number or identification mark, or number placed thereon under assignment of the division, of a vehicle required to be registered under the Motor Vehicle Code [66-1-1 NMSA 1978], or any vehicle, motor vehicle or motor vehicle engine for which a dismantler's notification form has been processed through the division, nor shall any person place or stamp any serial, engine, or other number or mark upon such vehicle, except one assigned thereto by the division. Any violation of this provision is a felony.

B. This section shall not prohibit the restoration by an owner of an original serial, engine, or other number or mark when such restoration is made under permit issued by the division, nor prevent any manufacturer from placing, in the ordinary course of business, numbers or marks upon vehicles or parts thereof.

History: 1953 Comp., § 64-3-508, enacted by Laws 1978, ch. 35, § 95.

ANNOTATIONS

Cross references. - For vehicle or motor vehicle dismantling, see 66-3-119 NMSA 1978.

For the penalty for violation, see 66-8-9 NMSA 1978.

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 66-3-507 NMSA 1978 and, having failed to do so, they had no right to enter the vehicle. State v. Guebara, 119 N.M. 662, 894 P.2d 1018 (Ct. App. 1995).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 61A C.J.S. Motor Vehicles § 596.

PART 7
MISCELLANEOUS PROVISIONS

66-3-601 to 66-3-603. Repealed.

ANNOTATIONS

Repeals. - Laws 1995, ch. 135, § 29 repeals 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 1994 Replacement Pamphlet.

66-3-604. Recompiled.

ANNOTATIONS

Recompilations. - Laws 1990, ch. 120, § 43 recompiles 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 misdemeanor for any 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 such child or ward to violate any of the provisions of the Motor Vehicle Code [66-1-1 NMSA 1978].

C. These regulations applicable to bicycles shall 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 herein.

History: 1953 Comp., § 64-3-701, enacted by Laws 1978, ch. 35, § 100.

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.

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 66-7-1 to 66-7-511 NMSA 1978.

Bicyclists are placed in the same duty category as other vehicular traffic. Aragon v. Speelman, 83 N.M. 285, 491 P.2d 173 (Ct. App. 1971).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 7A Am. Jur. 2d Automobiles and Highway Traffic § 209.

Reciprocal duties of driver of automobile and bicyclist, 172 A.L.R. 736.

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.

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.

PART 9
EQUIPMENT

66-3-801. Equipment; prohibited acts.

A. Except as otherwise provided in this section, it is a misdemeanor for any 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 which is in such unsafe condition as to endanger any person or which 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 which 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 which 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 65-3-13 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.

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 generally, see 66-8-7 NMSA 1978.

For penalty assessments for misdemeanor, see 66-8-116 NMSA 1978.

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, 68 N.M. 367, 362 P.2d 519 (1961).

Jury can consider fact of lapsed inspection certificate. - On the question of knowledge, the jury could take into consideration the proof that the car carried no current brake and light inspection certificate as required by 64-21-1, 1953 Comp. (similar to 66-3-901 NMSA 1978). Ferran v. Jacquez, 68 N.M. 367, 362 P.2d 519 (1961).

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, 74 N.M. 135, 391 P.2d 419 (1964).

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.

66-3-802. When lighted lamps are required.

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 hereinafter respectively required for different classes of vehicles, subject to exceptions with respect to parked vehicles as hereinafter stated.

History: 1953 Comp., § 64-3-802, enacted by Laws 1978, ch. 35, § 108.

ANNOTATIONS

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, 74 N.M. 135, 391 P.2d 419 (1964).

Violation for truck to stand on highway without lights burning. - Fact that a truck was standing on the main grade of the highway after dark, more than one hour after sunset, without lights burning front or rear, constituted a violation of 11-847, C.S. 1929, regardless of the length of time it had stood there. Duncan v. Madrid, 44 N.M. 249, 101 P.2d 382 (1940).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 7A Am. Jur. 2d Automobiles and Highway Traffic § 189.

Validity and construction of regulations as to automobile lights, 11 A.L.R. 1226, 78 A.L.R. 815.

Gross negligence, operating without lights as, within statute limiting liability of owner or operator of automobile for injury to guest, 86 A.L.R. 1150.

Delegation of legislative power as to lights, 87 A.L.R. 555.

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 shall 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 which shall 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 nor 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 shall apply only to new motor vehicles sold after July 1, 1953.

History: 1953 Comp., § 64-3-804, enacted by Laws 1978, ch. 35, § 110; 1981, ch. 361, § 12.

ANNOTATIONS

Cross references. - For provisions relating to headlights on snowmobiles, see 66-9-8, 66-9-9 NMSA 1978.

Negligence per se to drive automobile with only one headlight. Silva v. Waldie, 42 N.M. 514, 82 P.2d 282 (1938).

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, and pole trailer, and any other vehicle which is being drawn at the end of a train of vehicles, shall be equipped with at least one tail lamp mounted on the rear, which, when lighted as hereinbefore required, shall emit 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. And further, every such above-mentioned 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, which when lighted as herein required shall comply with the provisions of this section.

B. Every tail lamp upon every vehicle shall be located at at [a] height of not more than seventy-two inches nor 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 or tail lamps, 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.

History: 1953 Comp., § 64-3-805, enacted by Laws 1978, ch. 35, § 111.

ANNOTATIONS

Cross references. - For the definition of "truck tractor," see 66-1-4.17 NMSA 1978.

For provisions relating to taillights on snowmobiles, see 66-9-8, 66-9-9 NMSA 1978.

Party's favorable verdict inconsistent with his vehicle's lack of taillight. - Where jury found, in answer to special interrogatories, that plaintiff's truck was not equipped with a taillight and that absence of taillight contributed to collision, such answers were inconsistent with a general verdict for plaintiff. Pettes v. Jones, 41 N.M. 167, 66 P.2d 967 (1937), overruled as to effect on proximate causation doctrine Crocker v. Johnston, 43 N.M. 469, 95 P.2d 214 (1939).

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 thereto.

B. Every such reflector shall be mounted on the vehicle at a height not less than twenty inches nor 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 such 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.

History: 1953 Comp., § 64-3-806, enacted by Laws 1978, ch. 35, § 112; 1981, ch. 361, § 13.

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.

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, 77 N.M. 467, 423 P.2d 988 (1967).

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, 74 N.M. 135, 391 P.2d 419 (1964).

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 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, 77 N.M. 769, 427 P.2d 655 (1967).

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. It was not enacted by the legislature, 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, which project a beam of light of an intensity greater than three hundred candlepower 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. No person shall drive or move, upon any highway, any vehicle or equipment with a lamp or device thereon displaying a red light visible from directly in front of the center of the vehicle or equipment. This section does not apply to any vehicle upon which a red light visible from the front is expressly authorized or required by the Motor Vehicle Code [66-1-1 NMSA 1978].

C. Flashing lights are prohibited except as provided in Subsection D of this section and except on authorized emergency vehicles, school buses, snow-removal equipment and highway-marking equipment. 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. Tow cars standing on highways for the purpose of removing, and actually engaged in removing, disabled vehicles, and while engaged in towing any disabled vehicle, may display flashing lights. This shall not be construed as permitting the use of flashing lights by tow cars in going to or returning from the location of disabled vehicles unless actually engaged in towing a disabled vehicle.

E. Only fire department vehicles, law enforcement agency vehicles, ambulances and school buses shall 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.

ANNOTATIONS

Cross references. - For authorized emergency vehicles, see 66-7-6 NMSA 1978.

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 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 64-15-5, 1953 Comp. (similar to 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. 1961-62 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 such vehicle, including two separate means of applying the brakes, each of which means shall be 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 shall 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 which 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 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 such vehicles are equipped with at least two steerable axles the wheels of one such 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 [Articles 1, 3 and 5 of Chapter 65 NMSA 1978]; and

(e) motor vehicles of the types named in this section hereinabove, heretofore manufactured prior to July 1, 1963;

(4) every house trailer of a gross weight in excess of three thousand pounds, registered in the state, shall be equipped with brakes on at least two wheels in contact with road surfaces. Every house trailer of a gross 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, such 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 such braked wheels, such vehicle or combination of vehicles to which such motor vehicle may be attached. The operating controls of such 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 below, 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.

ANNOTATIONS

Cross references. - For definition of "driveaway-towaway operation," see 66-1-4.4 NMSA 1978.

Brakes for construction equipment. - Construction equipment which is being pulled over the highway is required to be equipped with brakes pursuant to 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. 1959-60 Op. Att'y Gen. No. 59-38.

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, 68 N.M. 367, 362 P.2d 519 (1961).

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, 79 N.M. 227, 441 P.2d 756 (1968).

Question of excuse for jury to determine. - The questions of whether defendants were excused for not maintaining the brakes in accordance with statutory minimum requirements and whether defendant approached too closely before attempting to apply his brakes were for the jury to determine. Roybal v. Lewis, 79 N.M. 227, 441 P.2d 756 (1968).

Mere showing of defective brakes establishes prima facie negligence case. - Under 64-20-41 and 64-20-1, 1953 Comp. (similar to this section and 66-3-801 NMSA 1978 respectively), the mere showing of the defectiveness of the brakes at the time of the accident, and that such defectiveness was the proximate cause of the accident, establishes negligence per se upon the part of the appellee or at the very least prima facie evidence of negligence; it is not necessary to show affirmatively that the defendant knew or should have known of the condition of the brakes. Ferran v. Jacquez, 68 N.M. 367, 362 P.2d 519 (1961).

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, 82 N.M. 450, 483 P.2d 505 (Ct. App. 1971).

Instruction that statute violator must sustain burden of reasonableness correct. - Instruction stating "to legally justify or excuse a violation of the statute, the violator must

sustain the burden of showing that he did that which might reasonably be expected of a person of ordinary prudence acting under similar circumstances who desires to comply with the law," held correct statement of the law. Goodman v. Venable, 82 N.M. 450, 483 P.2d 505 (Ct. App. 1971).

That car was going to be used on highway would be presumed unless as a matter of defense it was shown affirmatively that some different use was contemplated. Ferran v. Jacquez, 68 N.M. 367, 362 P.2d 519 (1961).

Presumption owner knew or should have known brakes were defective. - That defendant 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 law. Ferran v. Jacquez, 68 N.M. 367, 362 P.2d 519 (1961).

If accident occurs shortly after owner has parted with possession of an automobile, and there is evidence to support a finding that the brakes were defective at the time of the accident, there is sufficient basis for submitting to the jury the question of whether or not the condition existed at the time the owner parted with possession so as to make him responsible therefor. Ferran v. Jacquez, 68 N.M. 367, 362 P.2d 519 (1961).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 187, 780 to 782.

Liability for injury caused by inadequacy on motor vehicle's braking appliances, 14 A.L.R. 1339, 63 A.L.R. 398, 170 A.L.R. 611.

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 repeals 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 1998 Replacement Pamphlet.

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.

For the duty to give audible warning upon approaching curves on mountain highways, see 66-7-359 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

Cross references. - For provisions relating to snowmobile mufflers, see 66-9-8 NMSA 1978.

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. 1955-56 Op. Att'y Gen. No. 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, 55 N.M. 357, 233 P.2d 1044 (1951).

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, windows to the immediate right and left of the driver or in 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.

History: 1953 Comp., § 64-3-846, enacted by Laws 1978, ch. 35, § 152; 1997, ch. 151, § 1.

ANNOTATIONS

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. 1959-60 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.

Impairment of driver's view through windshield, as affecting liability for automobile accident, 10 A.L.R. 299.

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. No person shall:

(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 and motor homes. The provisions of this section shall not apply to motor vehicle glazing which 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 the effective date of this section.

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 that [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. Any person who violates any provision of this section is guilty of a petty misdemeanor and upon conviction shall be punished by a fine of not more than seventy-five dollars ($75.00).

History: 1978 Comp., § 66-3-846.1, enacted by Laws 1997, ch. 151, § 2.

ANNOTATIONS

Bracketed material. - The bracketed word "than" in Paragraph H(3) was inserted by the compiler; it was not enacted by the legislature and is not a part of the law.

66-3-847. Restrictions as to tire equipment.

A. When the use thereof 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 metal tire in contact with the roadway except that for the purposes of the Motor Vehicle Code [66-1-1 NMSA 1978], a snow tire with metal studs designed to increase traction on ice or snow shall not be considered a metal tire.

C. No tire on a vehicle moved on a highway shall have on its periphery any 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 except that it shall be permissible to use farm machinery with tires having protuberances that will not injure the highway and except also that it shall be permissible to use 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, the operation of which upon a highway 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 first being granted by 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.

ANNOTATIONS

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 as to the duty imposed by law upon drivers of trucks and tractor-trailers in case of breakdown or stoppage upon the paved portion of the highway. The instruction should advise 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., 58 N.M. 96, 265 P.2d 983 (1954).

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, 56 N.M. 296, 243 P.2d 605 (1952).

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, 54 N.M. 119, 215 P.2d 598 (1950).

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, 55 N.M. 361, 233 P.2d 1047 (1951).

Reflector can be used in place of fusee or lantern. - Section 64-20-53, 1953 Comp. (similar to 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, 74 N.M. 135, 391 P.2d 419 (1964).

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 in violation of the statute would not flow from the findings as made. Terrel v. Lowdermilk, 74 N.M. 135, 391 P.2d 419 (1964).

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 was not enacted by the legislature and 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, 77 N.M. 769, 427 P.2d 655 (1967).

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.

Compiler's notes. - For other annotations, see notes to 66-3-849 NMSA 1978.

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, 74 N.M. 135, 391 P.2d 419 (1964).

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.

Parking at improper place as affecting liability for automobile accident, 73 A.L.R. 1074.

Constitutionality, construction, and application of statute prescribing special precautions in passing stopped automobile, 108 A.L.R. 987.

Stopping vehicle on traveled portion of highway as affecting responsibility for collision between vehicles, 131 A.L.R. 562.

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.

Provision substitutes for reasonably prudent man standard. - Section 64-20-53, 1953 Comp. (similar to this section), is a legislative substitution for the common-law standard of the reasonably prudent man. Bailey v. Jeffries-Eaves, Inc., 76 N.M. 278, 414 P.2d 503 (1966).

Violation negligence per se. - Violation of 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., 76 N.M. 278, 414 P.2d 503 (1966).

Jury may find that standard of due care requires more than compliance with the minimum standards of 64-20-53, 1953 Comp. (similar to this section). Bailey v. Jeffries-Eaves, Inc., 76 N.M. 278, 414 P.2d 503 (1966).

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, 77 N.M. 769, 427 P.2d 655 (1967).

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, 74 N.M. 135, 391 P.2d 419 (1964).

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, repeals 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 2001 Replacement Pamphlet.

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 the definition of corrosive liquid, see 66-3-866 NMSA 1978.

For the definition of compressed gas, see 66-3-867 NMSA 1978.

For adoption of flammable liquids regulations by the state fire board, 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 Whse. Co., 88 N.M. 579, 544 P.2d 719 (Ct. App. 1975); Thomas v. Henson, 102 N.M. 417, 696 P.2d 1010 (Ct. App. 1984), aff'd in part and rev'd in part on other grounds, 102 N.M. 326, 695 P.2d 476 (1985).

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.

This section applies to pickups and trucks as is indicated in the title of the act (Laws 1967, ch. 30, enacting this section and a section similar to 66-8-875 NMSA 1978) and as indicated 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 repeals 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 1994 Replacement Pamphlet.

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. It was not enacted by the legislature, and it is not part of the law.

PART 10
UNSAFE VEHICLES

66-3-901. Vehicles without required equipment or in unsafe condition.

No person shall 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 [66-1-1 NMSA 1978], and the vehicle is in such safe mechanical condition as not to endanger the driver or other occupant or any person upon the highway.

History: 1953 Comp., § 64-3-901, enacted by Laws 1978, ch. 35, § 194; 1985, ch. 46, § 1.

ANNOTATIONS

That car was going to be used on highway would be presumed unless as a matter of defense it was shown affirmatively that some different use was contemplated. Ferran v. Jacquez, 68 N.M. 367, 362 P.2d 519 (1961).

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, 68 N.M. 367, 362 P.2d 519 (1961).

If accident occurs shortly after owner has parted with possession of an automobile, and there is evidence to support a finding that the brakes were defective at the time of the accident, there is sufficient basis for submitting to the jury the question of whether or not the condition existed at the time the owner parted with possession so as to make him responsible therefor. Ferran v. Jacquez, 68 N.M. 367, 362 P.2d 519 (1961).

Jury can consider fact of lapsed inspection certificate. - On the question of knowledge, the jury could take into consideration the proof that the car carried no current brake and light inspection certificate as required by 64-21-1, 1953 Comp. (similar to this section). Ferran v. Jacquez, 68 N.M. 367, 362 P.2d 519 (1961).

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.

Constitutionality, construction, and application of statute or ordinance requiring inspection of motor vehicles, 106 A.L.R. 795.

60 C.J.S. Motor Vehicles § 26; 60A C.J.S. Motor Vehicles § 260.

PART 11
OFF-HIGHWAY MOTOR VEHICLES

66-3-1001. Short title.

Sections 66-3-1001 through 66-3-1016 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

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.

66-3-1002. Repealed.

ANNOTATIONS

Repeals. - Laws 1990, ch. 120, § 45 repeals 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 1989 Replacement Pamphlet. For present comparable provisions, see 66-1-4.1 to 66-1-4.20 NMSA 1978.

66-3-1003. Off-highway motor vehicles; registration.

A. Unless exempted from the provisions of the Off-Highway Motor Vehicle Act [66-3-1001 to 66-3-1016 NMSA 1978], no person shall operate a motor vehicle which is to be operated or used exclusively off the highways of this state unless the motor vehicle has been registered in accordance with the Off-Highway Motor Vehicle Act and the regulations of the division adopted pursuant to that act.

B. Application for registration and certificate of title shall be made as provided in Subsections A through C of Section 66-3-4 NMSA 1978. Upon receipt of an application for an original registration of the motor vehicle or for any certificate of title, the division shall make such examination of records and indexes as provided in Section 66-3-8 NMSA 1978, and registration indexes shall be kept and maintained for the motor vehicles in the manner provided in Section 66-3-9 NMSA 1978. The division shall issue evidence of registration and a certificate of title for the motor vehicles as provided in Section 66-3-10 NMSA 1978.

C. Upon receipt of the registration certificate, the owner of an off-highway motor vehicle shall affix the registration plate on the motor vehicle as prescribed by the regulations adopted by the division.

History: 1953 Comp., § 64-3-1003, enacted by Laws 1978, ch. 35, § 199; 1985, ch. 189, § 3; 1987, ch. 17, § 1.

66-3-1004. Registration fees.

A. The fee for registration of an off-highway motor vehicle is fifteen dollars ($15.00) for each motor vehicle, and the registration shall be good for two years after the year in which the motor vehicle is registered. Each registration must be renewed every three years to be valid.

B. Upon a change of ownership, the new owner must make application and pay a registration fee of fifteen dollars ($15.00) in the same manner as provided by regulations of the division for original registration.

C. Duplicate certificates of registration shall be issued upon payment of a one dollar ($1.00) fee.

History: 1953 Comp., § 64-3-1004, enacted by Laws 1978, ch. 35, § 200; 1985, ch. 189, § 4; 1987, ch. 17, § 2.

ANNOTATIONS

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

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.

66-3-1005. Exemptions.

The provisions of the Off-Highway Motor Vehicle Act [66-3-1001 to 66-3-1016 NMSA 1978] shall not apply to off-highway motor vehicles:

A. owned and operated by any agency or department of the United States, this state or any political subdivision of this state;

B. operated exclusively on lands privately held by the motor vehicle owner;

C. owned by nonresidents of this state; provided that the use in this state shall be for competition purposes only, and shall not exceed fifteen days and provided further 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. which are in the possession of dealers as stock-in-trade and not used for demonstration purposes; or

F. which are farm tractors or special mobile equipment as defined in Section 66-1-4 [66-1-4.6 and 66-1-4.16] NMSA 1978.

History: 1953 Comp., § 64-3-1005, enacted by Laws 1978, ch. 35, § 201; 1985, ch. 189, § 5.

ANNOTATIONS

Bracketed material. - The bracketed material in Subsection F was inserted by the compiler to reflect changes made by the 1990 legislation. The bracketed material was not enacted by the legislature and is not part of the law.

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 registration upon the grounds that:

A. 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 of the vehicle under the Motor Vehicle Code [66-1-1 NMSA 1978] or laws of this state;

B. the division has reasonable ground to believe that the motor vehicle is a stolen or embezzled vehicle or that the granting of registration 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 vehicle;

C. the required fee has not been paid; or

D. the motor vehicle excise tax has not been paid.

History: 1953 Comp., § 64-3-1006, enacted by Laws 1978, ch. 35, § 202; 1985, ch. 189, § 6.

ANNOTATIONS

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

Am. Jur. 2d, A.L.R. and C.J.S. references. - 60 C.J.S. Motor Vehicles § 100.

66-3-1007. Evidential value of certificate.

A certificate of title issued by the division for a motor vehicle 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 the vehicle appearing on the certificate.

History: 1953 Comp., § 64-3-1007, enacted by Laws 1978, ch. 35, § 203; 1985, ch. 189, § 7.

66-3-1008. Registration plates to be furnished by division.

The division, upon registering a motor vehicle, shall issue to the owner registration plates or validation 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.

ANNOTATIONS

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 repeals 66-3-1009 NMSA 1978, as amended by Laws 1985, ch. 89, § 9, relating to dealer demonstration certificates, effective July 1, 1991. For provisions of former section, see 1989 Replacement Pamphlet.

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.

66-3-1011. Operation on streets or highways.

A. No person shall operate an off-highway motor vehicle on any limited access highway or freeway at any time.

B. Off-highway motor vehicles may cross streets or highways if the crossings are made after coming to a complete stop prior to entering the roadway. These 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.

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.

ANNOTATIONS

Cross references. - For controlled access highways generally, see 67-11-1 NMSA 1978 et seq.

66-3-1012. Movement of off-highway motor vehicles adjacent to highway.

Off-highway motor vehicles issued a registration plate pursuant to Subsection C of Section 66-3-1003 NMSA 1978 may be moved, by nonmechanical means only, adjacent to a 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 when no other route is available.

History: 1953 Comp., § 64-3-1012, enacted by Laws 1978, ch. 35, § 208; 1985, ch. 189, § 12.

66-3-1013. [Riding on private lands; landowner's liability.]

A. No landowner shall be held liable for damages arising out of off-highway motor vehicle-related accidents or injuries occurring on his lands in which he 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 except with the express permission of the owner 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.

ANNOTATIONS

Compiler's notes. - As enacted, this section contained a section heading which read "Liability; local registration prohibited."

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, 113 N.M. 291, 825 P.2d 224 (Ct. App. 1991).

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.

Any operator of an off-highway motor vehicle involved in an accident resulting in injuries to or the death of any person or resulting in damage to public or private property to the extent of fifty dollars ($50.00) or more shall immediately notify a law enforcement officer or 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.

ANNOTATIONS

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.

Every wildlife conservation officer, state policeman or peace officer of this state or any of its political subdivisions displaying his badge of office has the authority to enforce the provisions of the Off-Highway Motor Vehicle Act [66-3-1001 to 66-3-1016 NMSA 1978] and may require the operator of any off-highway motor vehicle to produce the certificate

of registration and the personal identification of the operator and may 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.

ANNOTATIONS

Cross references. - For the powers of the wildlife conservation officers, see 17-2-46 NMSA 1978.

66-3-1016. Penalties.

Any person who violates the provisions of the Off-Highway Motor Vehicle Act [66-3-1001 to 66-3-1016 NMSA 1978] is guilty of a petty misdemeanor.

History: 1953 Comp., § 64-3-1016, enacted by Laws 1978, ch. 35, § 212; 1985, ch. 189, § 16.

ANNOTATIONS

Cross references. - For sentencing for misdemeanors, see 31-19-1 NMSA 1978.

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 66-1-4.11F NMSA 1978 and regulated by this section, is a "vehicle" for the purpose of the prohibition against driving while intoxicated under 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 (2001).

66-3-1102. Electric personal assistive mobility devices; standards; operator requirements; applicability; penalties.

A. As used in this section, "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.

B. 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.

C. The director shall by rule prescribe motor vehicle safety standards applicable to electric personal assistive mobility devices.

D. 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.

E. 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.

F. An operator who violates a provision of Subsection B, C or D 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.

G. This section does not apply to personal assistive mobility devices used by persons with disabilities.

History: Laws 2002, ch. 38, § 1.

ANNOTATIONS

Effective dates. - Laws 2002, ch. 38, § 2 makes the act effective on July 1, 2002.

ARTICLE 4
LICENSING OF DEALERS AND WRECKERS

66-4-1. Dealers, wreckers, 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 [66-1-1 NMSA 1978], including:

(a) trailers, but not trailers sold as kits;

(b) recreational vehicles designed to be towed; and

(c) motorcycles over fifty-five cubic centimeters;

(2) dismantling any vehicle for the resale of the parts. Any person possessing three or more wrecked, dismantled or partially wrecked or dismantled vehicles and selling or offering for sale a used vehicle part and who regularly sells or offers for sale used vehicles or used vehicle parts shall be presumed to be conducting the business of wrecking or dismantling a vehicle for the resale of the parts;

(3) 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;

(4) 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

(5) 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 wrecker of vehicles license or a 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. A metal processor or dealer in scrap who dismantles, processes for scrap, shreds, compacts, crushes or otherwise destroys more than three vehicles within a period of one year shall be licensed pursuant to the provisions of Sections 66-4-1 through 66-4-9 NMSA 1978.

D. To ensure that a dealer, wholesaler, distributor, wrecker of vehicles 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.

E. Upon application to a court for the issuance of an injunction against an unlicensed person, the court may issue an order temporarily restraining that person from doing business. The court shall hear the matter within three days and, upon a showing by the preponderance of the evidence that the person is operating without a license and that the person has been given notice of the hearing as required by law, the court may enjoin the person from engaging in business in New Mexico until the person ceases to be unlicensed. Upon issuing an injunction, the court may also order the business premises of the person to be sealed by the sheriff and may allow the person access thereto only upon approval of the court.

F. A temporary restraining order shall not be issued against a person who has complied with the provisions of this section. Upon a showing to the court by a person against whom a temporary restraining order has been issued that he has a license in

accordance with the provisions of this section, the court shall dissolve or set aside the temporary restraining order.

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.

ANNOTATIONS

Cross references. - For the definition of "dealer," see 66-1-4.4 NMSA 1978.

For the definition of "wrecker of vehicles," see 66-1-4.20 NMSA 1978.

For penalty for violation, see 66-4-9 NMSA 1978.

For the fee for a license, see 66-6-18 NMSA 1978.

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.

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 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 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.

Compiler's notes. - Court decisions and attorney general's opinions decided pursuant to former, similar provisions have been placed under this section.

Trailer or bus manufacturer as "dealer". - 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.

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.

Illegality of unlicensed dealer's contract must be affirmatively pled. - Paragraph C of Rule 1-008 requires affirmative pleading of the defense of illegality of a contract made by an unlicensed dealer. L. & B. Equip. Co. v. McDonald, 58 N.M. 709, 275 P.2d 639 (1954).

Fact that alleged principal was licensed automobile dealer under 64-8-1, 1953 Comp. (similar to this section) and had, likewise, procured the bond required by 64-8-6, 1953 Comp. (similar to 66-4-7 NMSA 1978) was considered favorably in determination that agency relationship existed. State v. DeBaca, 82 N.M. 727, 487 P.2d 155 (Ct. App. 1971).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 150 to 152.

Constitutionality, construction, and application of statutes relating to highway transportation of automobiles for purpose of sale, 110 A.L.R. 622.

Licensing and registration of vehicle dealers, 126 A.L.R. 740, 57 A.L.R.2d 1265, 7 A.L.R.3d 1173.

Constitutionality, construction, and application of statutes or other regulations regarding sale or offer for sale of used automobiles, 134 A.L.R. 647.

53 C.J.S. Licenses § 34; 60 C.J.S. Motor Vehicles §§ 40, 41.

66-4-2. Department to issue license.

A. The department, upon receiving application accompanied by the required fee and when satisfied that the applicant is of good character and, so far as can be ascertained, has complied with and will comply 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 [66-1-1 NMSA 1978], shall issue to the applicant a license which entitles the licensee to carry on and conduct the business of a dealer, wrecker of vehicles or title service company, as the case may be, during the period for which the license is issued. The license shall expire on the last day of the period for which it is issued and may be renewed upon application and payment of the fee required by law.

B. Any dealer or wrecker of vehicles licensee, before moving any one or more 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, for an additional place of business unless:

(1) the place of business is an established place of business; or

(2) the majority of dealers, other than dealers in motorcycles, in the county in which the proposed additional place of business would be located have been offered the opportunity, in documentation acceptable to the department, to offer vehicles for sale at the proposed additional place of business by the applicant; provided that the offer shall be for sale of vehicles at all times at which the applicant proposes to sell vehicles and shall not be conditioned upon the payment of any fee by any dealer to whom it is addressed greater than a fair share of the actual expenses incurred.

C. Any person to whom the department has issued a license to conduct the business of a dealer in motorcycles is deemed a wrecker of motorcycles without additional license.

D. The department is authorized to establish a staggered system for licensing of dealers, wholesalers, distributors and wreckers of vehicles and of title service companies, provided that any license issued shall expire on the last day of a month. During the initial adjustment period of July 1, 1999 through December 31, 2000, the department may issue licenses for periods less than twelve months or up to twenty-one months to establish a more uniform monthly pattern of expirations. For any license issued for a period other than twelve months during the initial adjustment period, the fee imposed pursuant to Section 66-6-18 NMSA 1978 shall be adjusted accordingly. After the initial adjustment period, licenses issued shall be issued for a period of twelve months.

History: 1953 Comp., § 64-4-2, enacted by Laws 1978, ch. 35, § 215; 1991, ch. 196, § 1; 1999, ch. 122, § 3.

ANNOTATIONS

Cross references. - For penalty for violation of section, see 66-4-9 NMSA 1978.

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.

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.

Trailer or bus manufacturer as "dealer". - 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.

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.

66-4-3. 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 temporary permits for violation of the Motor Vehicle Code [66-1-1 NMSA 1978]. The department shall take the action authorized in this section only after hearing. Notice of hearing shall be given the party concerned as provided in Section 66-2-11 NMSA 1978. The notice shall state the proposed action of the department and the reason for the proposed action.

B. The department shall prepare rules for the conduct of the hearing. At the hearing, the technical rules of evidence do not apply, and a party has the right to be represented by counsel, to call witnesses in his own behalf and to cross-examine the witnesses of other parties.

C. The secretary or his designated agent shall conduct the hearing for the department and shall cause a record of hearing to be made.

D. Within ten days after completion of the hearing, the secretary shall cause to be served upon all parties, in the manner provided in Section 66-2-11 NMSA 1978, his 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 permits, canceling dealer plates and temporary permits or suspending use of temporary permits for a time stated.

E. A party aggrieved by the secretary'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.

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 generally, see 66-3-401 NMSA 1978 et seq.

For penalty for violation of section, see 66-4-9 NMSA 1978.

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.

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.

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. Every dealer and wrecker of vehicles licensee shall maintain a record, in form as prescribed by the department of:

(1) 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;

(2) every motor vehicle body, chassis or engine which is sold or otherwise disposed of; and

(3) every such vehicle which is bought or otherwise acquired and dismantled by the licensee.

B. Every record required to be maintained pursuant to Subsection A 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 and 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.

C. Every title service company licensee shall maintain a record of:

(1) every temporary registration plate issued;

(2) every title and registration application accepted for processing; and

(3) any other information prescribed by the department.

D. 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.

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 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 wrecker of vehicles unless an established place of business as defined in the Motor Vehicle Code [66-1-1 NMSA 1978] is maintained by the dealer or wrecker of vehicles. Each license to carry on or conduct the business of a dealer or wrecker of vehicles 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. Each such 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.

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 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 wreckers of vehicles; title service companies; dealers of motorcycles only; bond.

A. Before issuance of any dealer's license, wholesaler's license, distributor's license, wrecker of vehicles 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 his vendees, conditioned upon payment of any loss, damage and expense sustained by the purchaser or his 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 wrecker of vehicles. 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, wrecker of vehicles 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 a wrecker of vehicles 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, wrecker of vehicles 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 wrecker of vehicles or of a title service company may be suspended or canceled if the dealer, wholesaler, distributor, wrecker of vehicles 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.

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 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.

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.

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).

Provision is enlargement to benefit those injured by dealer fraud. - Section 64-8-6, 1953 Comp. (similar to this section), is clearly an enlargement for the benefit of anyone injured by the dealer's fraudulent conduct of his business, and also for the benefit of any purchaser injured by failure of title. Commercial Ins. Co. v. Watson, 261 F.2d 143 (10th Cir. 1958).

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., 75 N.M. 529, 407 P.2d 367 (1965).

Bond does not cover fraud occurring long after title passed. - The reason for the bond is to protect "purchasers" because of failure of title. 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., 75 N.M. 313, 404 P.2d 137 (1965).

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, 82 N.M. 63, 475 P.2d 457 (1970).

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., 95 N.M. 13, 618 P.2d 357 (1980).

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 fact that the parties failed to comply with the title transfer provisions of the Motor Vehicle Code would not operate to continue the plaintiff's status as a purchaser indefinitely. 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., 75 N.M. 313, 404 P.2d 137 (1965).

Surety cannot collaterally attack final judgment that purchaser's interest inferior. - Surety is bound by final judgment that bank's lien on truck is superior to claim of purchaser, and may not assert invalidity of chattel mortgage or superiority of purchaser's claim as a bona fide purchaser in order to avoid obligation on its bond, where surety did not preserve the right to review these issues by cross appeal. Yoakum v. Western Cas. & Sur. Co., 75 N.M. 529, 407 P.2d 367 (1965).

Fact that alleged principal was licensed automobile dealer under 64-8-1, 1953 Comp. (similar to 66-4-1 NMSA 1978) and had, likewise, procured the bond required by 64-8-6, 1953 Comp. (similar to this section), was considered favorably in determination that agency relationship existed. State v. DeBaca, 82 N.M. 727, 487 P.2d 155 (Ct. App. 1971).

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 64-8-6, 1953 Comp. Lewallen v. Elmore Mobile Homes, Inc., 89 N.M. 323, 551 P.2d 1370 (Ct. App. 1976).

66-4-8. Repealed.

ANNOTATIONS

Repeals. - Laws 2003, ch. 410, § 9 repeals 66-4-8 NMSA 1978, as amended by Laws 1978, ch. 35, § 221, and as amended by Laws 1998, ch. 48, § 14 and Laws 1999, ch. 122, § 8, relating to exemptions from licensing and bond provisions. For provisions of former section, see the 2001 Replacement Pamphlet.

66-4-9. Penalty for destroying or dismantling in violation of the act.

A. Any person violating any provision of Sections 66-3-119 and 66-3-121, 66-3-123 through 66-3-125 and 66-4-1 through 66-4-9 NMSA 1978 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.

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.

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 repeals 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 1989 Replacement Pamphlet. For present comparable provisions, see 66-1-4.1 to 66-1-4.20 NMSA 1978.

66-5-1.1. Definitions.

As used in Sections 66-5-5, 66-5-8 and 66-5-9 NMSA 1978, "traffic violation" means a violation of one or more of the following offenses:

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. homicide by vehicle, as provided in Section 66-8-101 NMSA 1978;

E. injury to pregnant woman by vehicle, as provided in Section 66-8-101.1 NMSA 1978;

F. driving while under the influence of intoxicating liquor or drugs, as provided in Section 66-8-102 NMSA 1978;

G. refusal to submit to chemical tests, as provided in Section 66-8-111 NMSA 1978;

H. reckless driving, as provided in Section 66-8-113 NMSA 1978;

I. careless driving, as provided in Section 66-8-114 NMSA 1978;

J. racing on highways, as provided in Section 66-8-115 NMSA 1978; and

K. failure to yield, as provided in Sections 66-7-328 through 66-7-332.1 NMSA 1978.

History: Laws 1999, ch. 175, § 1.

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: 1978 Comp., § 66-5-1.2, enacted by Laws 2003, ch. 164, § 4.

ANNOTATIONS

Effective dates. - Laws 2003, ch.164, § 11 makes the act effective on July 1, 2003.

66-5-2. Drivers must be licensed.

A. Except those expressly exempted from the Motor Vehicle Code [66-1-1 NMSA 1978], no person shall drive any motor vehicle or moped upon a highway in this state unless he:

(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 him by this state or by another state or country or has filed an affidavit with the division that he does not possess such other license; however, the applicant need not surrender a motorcycle license duly obtained under Paragraph (3) [(4)] of Subsection A of Section 66-5-5 NMSA 1978.

B. Any person licensed under the provisions of the Motor Vehicle Code [66-1-1 NMSA 1978] 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.

History: 1953 Comp., § 64-5-2, enacted by Laws 1978, ch. 35, § 224; 1981, ch. 361, § 20; 1989, ch. 318, § 13.

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.

Bracketed material. - The bracketed material in Subsection A(2) was inserted by the compiler. It was not enacted by the legislature, and is not a part of the law. Laws 1999, ch. 175, § 2 amended 66-5-5 NMSA 1978, adding new Subsection A(3) and redesignating former Subsection A(3) as present Subsection A(4), effective January 1, 2000.

The 1989 amendment, effective July 1, 1989, inserted "or moped" and substituted "this state" for "the state" in the introductory paragraph of Subsection A.

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 64-13-38, 1953 Comp. (similar to this section) and 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 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. 1959-60 Op. Att'y Gen. No. 59-36.

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., 53 N.M. 354, 208 P.2d 815 (1949).

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 (1998).

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, 46 N.M. 84, 121 P.2d 145 (1942).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 96 to 111.

Civil rights and liabilities as affected by failure to comply with regulations as to registration of automobile or motorcycle or licensing of operator, 16 A.L.R. 1108, 35 A.L.R. 62, 38 A.L.R. 1038, 43 A.L.R. 1153, 54 A.L.R. 374, 58 A.L.R. 532, 61 A.L.R. 1190, 78 A.L.R. 1028, 87 A.L.R. 1469, 111 A.L.R. 1258, 163 A.L.R. 1375.

Loan of car to unlicensed driver as affecting liability of owner for negligence, 68 A.L.R. 1015, 100 A.L.R. 920, 168 A.L.R. 1364.

Validity of statute or ordinance relating to grant of license or permit to operate automobile, 71 A.L.R. 616, 108 A.L.R. 1162, 125 A.L.R. 1459.

Construction and application of statutes requiring "chauffeurs'" licenses, 105 A.L.R. 69.

Ulterior motive of official as affecting exercise of authority to require motorist to exhibit driver's license, 154 A.L.R. 812.

Second offense, in operating vehicle or other instrumentality without proper license or permit, as applying to several vehicles or instrumentalities owned or operated by same person, 158 A.L.R. 772.

Lack of proper automobile registration or operator's license as evidence of operator's negligence, 29 A.L.R.2d 963.

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

Selective Service Act - The Selective Service Act, referred to in this section, is codified as 50 U.S.C. App. § 451 et seq.

Effective dates. - Laws 2003, ch. 425, § 2 makes the act effective on July 1, 2003.

66-5-3. Repealed.

ANNOTATIONS

Repeals. - Laws 1993, ch. 68, § 57 repeals 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 1992 Replacement Pamphlet.

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. any employee of the United States while driving a motor vehicle owned by or leased to the United States and being driven on official business;

B. any person who is at least fifteen years of age and who has in his immediate possession a valid driver's license issued to him in his 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 he is employed for compensation by another for the purpose of driving a motor vehicle;

C. any 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. any driver of a farm tractor or implement of husbandry temporarily drawn, moved or propelled on the highway;

E. any driver of an off-highway motorcycle; and

F. any person in the military service of the United States or who has been honorably discharged therefrom within thirty days when:

(1) he holds a driver's license of this state not more than six years old which has expired while the holder was in service;

(2) he is stationed outside the geographical limits of this state;

(3) he is on leave from military service; and

(4) only while operating a motor vehicle in this state.

History: 1953 Comp., § 64-5-4, enacted by Laws 1978, ch. 35, § 226; 1989, ch. 318, § 14.

ANNOTATIONS

Cross references. - For snowmobile operators not being required to be licensed, see 66-9-8 NMSA 1978.

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 division of motor vehicles) 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 64-13-38, 1953 Comp. (similar to this section), that is, carrying a valid driver's license from his home state. Although there is no statutory authority, it is probable that the department of motor vehicles, by a proper rule or regulation, can provide that new residents of the state of New Mexico have a period of 30 days in which to make an application for a New Mexico operator's license. 1966 Op. Att'y Gen. No. 66-22.

Duration of stay not determinative of necessity to obtain license. - The phrase "home state" in Subsection B of 64-13-38, 1953 Comp. (similar to this section), refers to the resident state of a vehicle operator. Consequently, a nonresident driver with a valid and current driver's license issued by another state is not required to apply for an operator's license in this state. Therefore, just because a person has been in the state of New Mexico for a period of 30 days does not mean that the department of motor vehicles (now division of motor vehicles) can require such person to obtain a New Mexico operator's license. 1966 Op. Att'y Gen. No. 66-22.

Licensed nonresident drivers are not required to apply for New Mexico operator's license. 1959-60 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.

Statute with respect to nonresident operators' or drivers' licenses, 82 A.L.R. 1392.

Exemption of farm vehicles from licenses and registration, 91 A.L.R. 422.

License regulations discriminating against nonresidents, 112 A.L.R. 68.

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 [66-1-1 NMSA 1978] 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 over who is enrolled in and attending or has completed a driver education course that includes a DWI education and prevention component approved by the bureau or offered by a public school;

(2) a provisional license to any 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; and

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

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

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

(b) who has complied with restrictions on that license;

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

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

(4) to any 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:

(a) the motor [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 [Chapter 66, Article 5, Part 501 NMSA 1978];

C. who is an habitual drunkard, an habitual user of narcotic drugs or an habitual user of any drug to a degree that renders him incapable of safely driving a motor vehicle;

D. who, within any ten-year period, is three 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. Ten years after being so convicted for the third time, 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 in the ten-year period prior to his request for restoration of his license. 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 three previous convictions shall not prohibit issuance of the license applied for. Should the person be subsequently once convicted of driving a motor vehicle while under the influence of intoxicating liquor or drugs, the division shall revoke his license for five years, after which time he may apply for restoration of his license as provided in this subsection;

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

F. who is required by the Motor Vehicle Code to take an examination, unless he has successfully passed the examination;

G. who is required under the laws of this state to deposit proof of financial responsibility and who has not deposited the proof;

H. 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

I. 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.

ANNOTATIONS

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

For financial responsibility generally, see 66-5-201 NMSA 1978 et seq.

Bracketed material. - The bracketed material in Paragraph A(4)(a) was inserted by the compiler. It was not enacted by the legislature and is not part of the law.

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".

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 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 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.

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. 1957-58 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 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. 1955-56 Op. Att'y Gen. No. 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. Health standards advisory board.

A. There shall be a "health standards advisory board" consisting of three members of the healing arts professions appointed by the director with the assistance of the secretary of health.

B. The board shall advise the director on physical and mental criteria and vision standards relating to the licensing of drivers under the provisions of this chapter.

C. The division, having cause to believe that a licensed driver or applicant may not be physically, visually or mentally qualified to be licensed, may obtain the advice of the board. The board may formulate its advice from records and reports or may cause an examination and report to be made by one or more members of the board or any other qualified person it may designate. The licensed driver or applicant may cause a written report to be forwarded to the board by a healing arts practitioner of his choice, and it shall be given due consideration by the board only after the licensed driver or applicant has again undergone an on-the-road examination and any physical, visual or mental

tests as recommended by the board. These examinations and tests may not be waived by the division.

D. Members of the board and other persons making examinations shall not be held liable for their opinions and recommendations presented pursuant to Subsection C of this section.

E. The director shall pay members of the board per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] and, in addition, may determine and pay an hourly rate for work performed not to exceed fifty dollars ($50.00) per hour and not to exceed five hours per month.

F. Reports received or made by the board or its members for the purpose of assisting the division in determining whether a person is qualified to be licensed are for the confidential use of the board or the division and may not be divulged to any person or used as evidence in any trial.

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.

ANNOTATIONS

The 1989 amendment, effective July 1, 1989, made minor stylistic changes in Subsections A and C, added present Subsection E, and redesignated former Subsection E as present Subsection F.

1995 amendments. - Laws 1995, ch. 135, § 16, effective June 16, 1995, in Subsection A, inserting "at least" following "consisting of", substituting "secretary after consultation with the secretary of health" for "director with the assistance of the secretary of health and environment", and adding the last sentence; in Subsection B, substituting "the Motor Vehicle Code" for "this chapter" and adding the language beginning "including identifying sources" at the end; in Subsection D, deleting "Subsection C of" preceding "this section"; and substituting "department" for "division" and "director" in Subsections B, C, E, and F, was approved April 5, 1995. However, Laws 1995, ch. 136, § 1, effective June 16, 1995, also amending this section by, in Subsection A, inserting "a health standards", and deleting "and environment" at the end of the subsection; in Subsection C, inserting "only after the licensed driver or applicant has again undergone an on-the-road examination and any physical, visual or mental tests as recommended by the board" in the third sentence, and adding the last sentence, but not giving effect to the changes made by the first 1995 amendment, was approved April 5, 1995. The section is set out as amended by Laws 1995, ch. 136, § 1. See 12-1-8 NMSA 1978.

Meaning of "this chapter". - The term "this chapter," used in Subsection B, appears to refer to the Motor Vehicle Code, Articles 1 to 8 of Chapter 66 NMSA 1978 (except 66-7-102.1 NMSA 1978), the licensing provisions of which are compiled as 66-5-1 to 66-5-51 NMSA 1978.

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. 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

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. 1955-56 Op. Att'y Gen. No. 6512.

Legislative intent. - The apparent intent of the legislature is to cover those situations when the principal operation or activity of the employee is driving, and is not intended to cover those miscellaneous driving activities which are collateral to the main purpose of the employment and take up only limited portion of the working day. 1955-56 Op. Att'y Gen. No. 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 who has completed a driver education course that includes a DWI prevention and education program approved by the bureau or offered by a public school, who has had an instruction permit for at least six months, and who has successfully completed a practice driving component may apply to the division for a provisional license. 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. The applicant's parent or guardian shall certify that the applicant has completed the practice driving component.

B. 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 his immediate possession, to operate a motor vehicle upon the public highways between the hours of 5:00 a.m. and midnight. A provisional licensee may drive at any hour if:

(1) accompanied by a licensed driver 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.

C. A provisional license shall not be issued to a person convicted of a traffic violation in the ninety days prior to applying for a provisional license. 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.

D. Any person fifteen years of age or older who is enrolled in and attending or has completed a driver education course that includes a DWI prevention and education program approved by the bureau or offered by a public school 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 his immediate possession, to drive a motor vehicle upon the public highways for a period of six months when accompanied by a licensed driver 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.

E. 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 or offered by a public school 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 he 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 twenty-one years of age or older who has been licensed for at least three years in this state or another state is occupying a seat beside the person.

F. The division in its discretion may issue a temporary driver's permit to an applicant for a driver's license permitting him 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 his 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.

G. Any 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.

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 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.

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.

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, temporary license, provisional license or instruction permit.

A. An application for an instruction permit, provisional license or driver's license shall be made upon a form furnished by the department. An application shall be accompanied by the proper fee. For permits, provisional licenses or driver's licenses other than those issued pursuant to the New Mexico Commercial Driver's License Act [66-5-52 to 66-5-72 NMSA 1978], 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 shall contain the full name, social security number or individual tax identification number, 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. 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. The secretary is authorized to establish by regulation other documents that may be accepted as a substitute for a social security number or an individual tax identification number.

C. An applicant shall indicate whether he 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 driver's license, provisional license, temporary license or instruction permit 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 driver's license, provisional license, temporary license or instruction permit for a period of one year. Intentional and willful failure to disclose, as required in this subsection, is a misdemeanor.

D. An applicant less than eighteen years of age who is making an application to be granted his first New Mexico driver's license shall submit evidence that he has:

(1) successfully completed a driver education course that included a DWI prevention and education program approved by the bureau or offered by a public school. 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 the twelve-month period immediately preceding the date of the application for the driver's license;

(3) complied with restrictions on that license;

(4) not been convicted of a traffic violation committed during the ninety days prior to applying for a driver's license;

(5) not been cited for a traffic violation that is pending at the time of his application; and

(6) 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 his application.

E. An applicant eighteen years of age and over, but less than twenty-five years of age, who is making an application to be granted his first New Mexico driver's license shall submit evidence with his application that he has successfully completed a bureau-approved DWI prevention and education program.

F. An applicant twenty-five years of age and over who has been convicted of driving under the influence of intoxicating liquor or drugs, and who is making an application to be granted his first New Mexico driver's license, shall submit evidence with his application that he has successfully completed a bureau-approved DWI prevention and education program.

G. Whenever 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.

H. Whenever the department receives a request for a driver's record from another licensing jurisdiction, the record shall be forwarded without charge.

I. This section does not apply to driver's licenses issued pursuant to the New Mexico Commercial Driver's License Act [66-5-52 to 66-5-72 NMSA 1978].

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.

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 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.

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 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 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 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 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.

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 Uniform Anatomical Gift Act [Chapter 24, Article 6A NMSA 1978]. Anyone applying for a license may, if he desires, indicate his 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 an

(Name of applicant/donor)

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 sixteen 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 agencies and procurement organizations, as defined in the Uniform Anatomical Gift Act [Chapter 24, Article 6A NMSA 1978]. 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.

ANNOTATIONS

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.

The 2002 amendment, effective May 15, 2002, added the last sentence and form in Subsection A.

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. 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 any damages caused by the negligence or willful misconduct except as otherwise provided in Subsection C of this section.

C. In the event a minor deposits or there is deposited upon his behalf proof of financial responsibility in respect to the operation of a motor vehicle owned by him 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 B of this section.

History: 1953 Comp., § 64-5-11, enacted by Laws 1978, ch. 35, § 233; 1999, ch. 175, § 5.

ANNOTATIONS

Cross references. - For financial responsibility generally, see 66-5-201 NMSA 1978 et seq.

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," 64-24-1 and 64-24-2, 1953 Comp., was declared unconstitutional, as imposing an unreasonable and arbitrary classification, in McGeehan v. Bunch, 88 N.M. 308, 540 P.2d 238 (1975). 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, 81 N.M. 217, 465 P.2d 274 (1970).

Action barred against minor also barred against parent signing license. - Guest Act (64-24-1, 1953 Comp.) barred the action against the minor operator, and as a consequence an action or claim against the person signing the minor's license application was also barred. Hately v. Hamilton, 81 N.M. 774, 473 P.2d 913 (Ct. App.), cert. denied, 81 N.M. 773, 473 P.2d 912 (1970).

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. Subsection C of the section would lend support to this conclusion in that the minor's deposits, if made under Subsection C, clearly could not be subjected to a claim in the absence of liability on the part of the minor. Hately v. Hamilton, 81 N.M. 774, 473 P.2d 913 (Ct. App.), cert. denied, 81 N.M. 773, 473 P.2d 912 (1970).

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, 81 N.M. 217, 465 P.2d 274 (1970).

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.

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 his 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 [66-1-1 NMSA 1978] 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.

ANNOTATIONS

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.

The department shall, upon payment of the required fee, issue to every qualified applicant a driver's license as applied for, which license shall bear the full name, date of birth, New Mexico residence address and a brief description of the licensee and the signature of the licensee. No license shall be valid unless it bears the signature of the licensee.

History: 1953 Comp., § 64-5-15, enacted by Laws 1978, ch. 35, § 237; 1991, ch. 160, § 12.

ANNOTATIONS

Cross references. - For provision that an applicant may have his donor status, as provided in the 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 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".

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.

66-5-16. License to be carried and exhibited on demand.

Every licensee shall have his driver's license in his 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. However, no person charged with violating this section shall be convicted if he produces in court a driver's license theretofore issued to him and valid at the time of his arrest.

History: 1953 Comp., § 64-5-16, enacted by Laws 1978, ch. 35, § 238; 1985, ch. 186, § 1.

ANNOTATIONS

Cross references. - For requirement that evidence of vehicle registration be exhibited on demand, see 66-3-13 NMSA 1978.

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.

Urgent state interest is involved in checking vehicle registrations since there is a motor vehicle theft in New Mexico every two hours and 36 minutes, and in checking drivers licenses since this will tend to protect the public in that it can keep many unsafe drivers off the highway; thus, 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 purposes specified therein. State v. Bloom, 90 N.M. 226, 561 P.2d 925 (Ct. App. 1976), rev'd on other grounds, 90 N.M. 192, 561 P.2d 465 (1977).

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, 90 N.M. 647, 567 P.2d 496 (Ct. App. 1977), overruling, insofar as they construe these sections United States v. Jenkins, 528 F.2d 713 (10th Cir. 1975), and, 119 A.L.R. 190.

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 heading, "Section does not authorize random detention based on hunches" above).

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, 119 N.M. 383, 890 P.2d 1315 (1995).

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)(but see heading, "Section does not authorize random detention based on hunches" above).

In conducting general license and registration checks under 64-3-11 and 64-13-49, 1953 Comp. (similar to 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, 90 N.M. 226, 561 P.2d 925 (Ct. App. 1976), rev'd, 90 N.M. 192, 561 P.2d 465 (1977) (court held that defendants were lawfully stopped).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 101, 147.

Effect of ulterior motive of official in exercising authority to require motorist to exhibit driver's license, 154 A.L.R. 812.

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. Any person who uses or possesses an altered, forged or fictitious driver's license or permit is guilty of a misdemeanor.

B. Any person who alters or forges a driver's license or permit or who makes a fictitious driver's license or permit is guilty of a fourth degree felony.

History: 1953 Comp., § 64-5-18, enacted by Laws 1978, ch. 35, § 240.

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.

Possession of false driver's license is forbidden because it is illegal or illicit and comes within the definition of "contraband." State v. James, 91 N.M. 690, 579 P.2d 1257 (Ct. App.), cert. denied, 91 N.M. 751, 580 P.2d 972 (1978).

66-5-19. Restricted licenses.

A. The division, upon issuing a driver's license, shall have authority, whenever good cause appears, to 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 which the licensee may operate, or such other restrictions applicable to the licensee as the division may determine to be appropriate to assure the safe operation of a motor vehicle by the licensee. At age seventy-five and thereafter the applicant shall renew his license on a yearly basis at no cost to the applicant.

B. The division may either issue a special restricted license or may set forth such restrictions upon the usual license form.

C. The division may issue a restricted license for driving during daylight hours only, to some visually handicapped persons who fail the usual eyesight test. The medical advisory board shall evaluate the extent of the visual handicap and its effect on the driving ability of the applicant and, based on their recommendations, 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.

D. The division may, upon receiving satisfactory evidence of any violation of the restrictions of the license, suspend the same, but the licensee shall be entitled to a hearing as upon a suspension under Sections 66-5-1 through 66-5-47 NMSA 1978.

E. 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 him.

History: 1953 Comp., § 64-5-19, enacted by Laws 1978, ch. 35, § 241.

ANNOTATIONS

Cross references. - For the penalty for a misdemeanor, see 66-8-7 NMSA 1978.

Restricted license may be issued in place of suspended license. - Under 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. 1959-60 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; four-year issuance period; eight-year issuance period.

A. Except as provided in Subsection B of this section, Section 66-5-19 NMSA 1978 and Section 66-5-67 NMSA 1978, all driver's licenses shall be issued for a period of four years and each license shall expire thirty days after the applicant's birthday in the fourth year after the effective date of the license. 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 of a driver's license issued pursuant to the provisions of this subsection, pursuant to rules adopted by the department and may require an examination upon renewal of the driver's license.

B. At the option of an applicant, a driver's license may be issued for a period of eight years, provided that the applicant:

(1) pays the amount required for a driver's license issued for a term of eight years;

(2) otherwise qualifies for a four-year driver's license; and

(3) will not reach the age of seventy-five during the last four years of the eight-year license period.

C. A driver's license issued pursuant to the provisions of Subsection B of this section shall expire thirty days after the applicant's birthday in the eighth year after the effective date of the license.

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.

ANNOTATIONS

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.

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 1997 amendment added the second sentence and substituted "Each" for "The" at the beginning of the third sentence. Laws 1997, ch. 26 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature.

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.

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.

66-5-22. Notice of change of address or name.

Whenever any person, after applying for or receiving a driver's license, shall move from the address named in such application or in the license issued to him, or when the name of a licensee is changed by marriage or otherwise, such person shall, within ten days thereafter, notify the division in writing of his new address. In the event of a change of name, the license must 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.

History: 1953 Comp., § 64-5-22, enacted by Laws 1978, ch. 35, § 244.

ANNOTATIONS

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 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.

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 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".

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. 1959-60 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; conviction failure to appear, failure to pay in another state or tribal jurisdiction.

A. The division is authorized to suspend or revoke the license of 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. In addition, the division is authorized to suspend 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 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 [66-8-137.1 NMSA 1978] with New Mexico.

History: 1953 Comp., § 64-5-26, enacted by Laws 1978, ch. 35, § 248; 1981, ch. 360, § 4; 2003, ch. 164, § 7.

ANNOTATIONS

Cross references. - For the Driver License Compact, see 66-5-49 NMSA 1978.

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 64-13-57, 1953 Comp. (similar to this section), even though the tribal court sends a record of a conviction to the division. 1961-62 Op. Att'y Gen. No. 62-6.

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 makes the act effective on July 1, 2003.

66-5-28. Court to forward license to division; definitions of "convicted" and "conviction".

A. Whenever any person is convicted of any offense for which the Motor Vehicle Code [66-1-1 NMSA 1978] or the New Mexico Commercial Driver's License Act [66-5-52 to 66-5-72 NMSA 1978] requires mandatory revocation of the driver's license of that person by the division, the court in which the conviction is had shall require the surrender to it the driver's license or commercial driver's license then held by the person so convicted, and the court shall forward the driver's license or commercial driver's license to the division, together with the abstract of the conviction.

B. For the purposes of Subsection A of this section and Sections 66-5-29, 66-8-102 and 66-8-117 NMSA 1978, the terms "conviction" and "convicted" mean that the alleged violator has entered a plea of guilty or nolo contendere or been found guilty in the trial court and has waived or exhausted all of his rights to an appeal. For the purposes of any other provisions of the Motor Vehicle Code, the terms "conviction" and "convicted" mean a final conviction in the trial court. For the purposes of the Motor Vehicle Code, a forfeiture of bail or collateral deposited to secure a defendant's appearance in court or promise to mail payment on a penalty assessment when unvacated is equivalent to a conviction.

History: 1953 Comp., § 64-5-28, enacted by Laws 1978, ch. 35, § 250; 1979, ch. 71, § 4; 1989, ch. 14, § 21.

ANNOTATIONS

Cross references. - For definition of "revocation," see 66-1-4.15 NMSA 1978.

The 1989 amendment, effective July 1, 1989, in Subsection A inserted "or the New Mexico Commercial Driver's License Act", twice substituted "license or commercial driver's license" for "licenses", and made minor stylistic changes.

Driver convicted when guilt determined by plea or verdict. - Within the meaning of 64-13-58, 1953 Comp. (similar to this section), a person is convicted when his guilt has been determined either by a plea or by a verdict. 1959-60 Op. Att'y Gen. No. 60-49.

Deferred judgment sentence does not suspend finality of conviction. - If the imposition of the judgment and sentence of the court is deferred under the provisions of 31-20-3 NMSA 1978, the finality of the conviction is not suspended within the meaning of 64-13-58 and 64-13-59, 1953 Comp. (similar to this section and 66-5-29 NMSA respectively). 1959-60 Op. Att'y Gen. No. 60-49.

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, 66 N.M. 152, 343 P.2d 1040 (1959).

Federal courts have jurisdiction of all traffic offenses committed in Indian country, except where the Indian offender is punished in the tribal court. 1961-62 Op. Att'y Gen. No. 62-6.

Am. Jur. 2d, A.L.R. and C.J.S. references. - What amounts to conviction within statute making conviction ground for canceling license, 113 A.L.R. 1179.

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.

Conviction or acquittal in previous criminal case as bar to revocation or suspension of driver's license on same factual charges, 96 A.L.R.2d 612.

60 C.J.S. Motor Vehicles § 164.23.

66-5-29. Mandatory revocation of license by division.

A. The division shall immediately revoke the instruction permit, driver's license or provisional 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], if that person does not attend a driver rehabilitation program pursuant to Subsection E of Section 66-8-102 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 [Chapter 66, Article 5, Part 6 NMSA 1978], a person whose license has been revoked under this section, except as provided in Subsection C, D or E of this section, shall not be entitled to 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 and received by the division, if no appeal is filed, or one year from the date that the revocation is final and he has exhausted his rights to an appeal.

C. A person who upon adjudication as a delinquent or conviction is subject to license revocation under this section for an offense pursuant to which he was also subject to license revocation pursuant to Section 66-8-111 NMSA 1978 shall have his license revoked for that offense for a combined period of time equal to one year.

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

E. Upon receipt from a district court of a record 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 licenses or driving privileges of the convicted person. A person whose license or privilege has been revoked pursuant to the provisions of this subsection shall not be entitled to apply for or receive any new license or privilege until the expiration of one year from the date of the last application on which the revoked license was surrendered to and received by the division, if no appeal is filed, or one

year from the date that the revocation is final and the person has exhausted his rights to an appeal.

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.

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 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.

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.

1993 amendments. - Laws 1993, ch. 66, § 4, enacted an amendment to this section, effective January 1, 1994, approved March 19, 1993, which deleted "Subsection H of" preceding "Section 66-8-102" in Paragraph (2) of Subsection A. Laws 1993, ch. 78, § 4, enacted an amendment to this section, effective July 1, 1993, approved March 20, 1993 which 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. The section is set out as amended by Laws 1993, ch. 78, § 4. See 12-1-8 NMSA 1978.

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 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.

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. 1959-60

Op. Att'y Gen. No. 60-194 (rendered under former similar provision comparable to Paragraphs (2) and (3) of Subsection A.)

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, 66 N.M. 152, 343 P.2d 1040 (1959).

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 64-13-57, 1953 Comp. (similar to 66-5-26 NMSA 1978) even though the tribal court sends a record of a conviction to the division. 1961-62 Op. Att'y Gen. No. 62-6.

Municipality may enact drunken driving ordinance notwithstanding that state statute likewise covers same subject matter and provides penalty for violations. Mares v. Kool, 51 N.M. 36, 177 P.2d 532 (1946).

Mandatory revocation by state not denial of jury trial. - Mandatory revocation by state authorities of the driving license of any person convicted under 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, 58 N.M. 721, 275 P.2d 958 (1954).

The fact that a conviction under a municipal ordinance for drunken driving automatically sets in motion a proper exercise of the state police power has no connection with or relevance to the appellant's right to a jury trial. City of Tucumcari v. Briscoe, 58 N.M. 721, 275 P.2d 958 (1954).

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 31-20-3 NMSA 1978, the finality of the conviction is not suspended within the meaning of 64-13-58 and 64-13-59, 1953 Comp. (similar to 66-5-28 NMSA 1978 and this section). 1959-60 Op. Att'y Gen. No. 60-49.

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, 114 N.M. 390, 839 P.2d 134 (Ct. App. 1992).

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 1281.

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 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.

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 is authorized to suspend the instruction permit, driver's license or provisional license of a driver without preliminary hearing upon a showing by its records or other sufficient evidence, including information provided to the state pursuant to an intergovernmental agreement authorized by Section 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;

(9) has failed to fulfill a signed promise to appear or notice to appear in court as evidenced by notice from a state court or tribal court, whenever appearance is required by law or by the court as a consequence of a charge or conviction under the Motor Vehicle Code [66-1-1 NMSA 1978] or pursuant to the laws of the tribe;

(10) has failed to pay a penalty assessment within thirty days of the date of issuance by the state or a tribe; or

(11) has accumulated seven points, but less than eleven points, and when the division has received a recommendation from a municipal or magistrate judge that the license be suspended for a period not to exceed three months.

B. Upon suspending the license of a person as authorized in this section, the division shall immediately notify the licensee in writing and upon his request shall afford him an opportunity for a hearing as early as practicable within not to exceed twenty days, not counting Saturdays, Sundays and legal holidays, after receipt of the request in the county wherein the licensee resides unless the division and the licensee agree that the hearing may be held in some other county; provided that the hearing request is received within twenty days from the date that the suspension was deposited in the United States mail. The director may, in his discretion, extend the twenty-day period. Upon the hearing, the director or his duly authorized agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a reexamination of the licensee. Upon the hearing, the division shall either rescind its order of suspension or, good cause appearing therefor, may continue, modify or extend the suspension of the license or revoke the license.

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.

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 generally, see Rule 1-045 NMRA.

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.

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 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).

Necessity for procedural due process applies to suspension of one's driver's license by this state. City of Albuquerque v. Juarez, 93 N.M. 188, 598 P.2d 650 (Ct. App. 1979), overruled on other grounds, State v. Herrera, 111 N.M. 560, 807 P.2d 744 (Ct. App. 1991).

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, 67 N.M. 41, 351 P.2d 449 (1960).

Officer given definite and tangible guide. - The commissioner of motor vehicles (now director of the motor vehicle division) has a definite and tangible standard to guide him in determining whether or not a driver is an habitual reckless or negligent driver and therefore 64-13-60, 1953 Comp. (similar to this section), does not violate constitution. Johnson v. Sanchez, 67 N.M. 41, 351 P.2d 449 (1960).

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 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. 1959-60 Op. Att'y Gen. No. 60-194.

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. 1959-60 Op. Att'y Gen. No. 60-167.

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. 1961-62 Op. Att'y Gen. No. 62-6.

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. 1959-60 Op. Att'y Gen. No. 59-6.

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, 67 N.M. 41, 351 P.2d 449 (1960).

Public officials administering police regulations may be vested with discretion. - It is not always necessary that statutes and ordinances prescribe a specific rule of action, but on the other hand, some situations require the vesting of some discretion in public officials, as, for instance, where it is difficult or impracticable to lay down a definite, comprehensive rule, or the discretion relates to the administration of a police regulation and is necessary to protect the public morals, health, safety and general welfare. Johnson v. Sanchez, 67 N.M. 41, 351 P.2d 449 (1960).

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. 1961-62 Op. Att'y Gen. No. 61-97.

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. 1959-60 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. 1959-60 Op. Att'y Gen. No. 59-6.

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, 114 N.M. 390, 839 P.2d 134 (Ct. App. 1992).

Surrender of license not condition precedent to holding hearing. - Section 64-13-63, 1953 Comp. (similar to former 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, 64-13-63, 1953 Comp. does not give the division the authority to require such a surrender as a condition precedent to holding the hearing required by 64-13-60, 1953 Comp. (similar to this section). 1959-60 Op. Att'y Gen. No. 60-129.

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.

Validity of statute or ordinance relating to revocation of license, 71 A.L.R. 616, 108 A.L.R. 1162, 125 A.L.R. 1459.

What amounts to conviction or satisfies requirement as to showing of conviction within statute making conviction a ground for refusing to grant or for canceling license or special privilege, 113 A.L.R. 1179.

Second offense, in operating vehicle or other instrumentality without proper license or permit, as applied to several vehicles or instrumentalities owned or operated by same person, 158 A.L.R. 772.

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 Subsection C of this section and Sections 66-5-5 and 66-5-39 NMSA 1978.

B. Except as provided in the Ignition Interlock Licensing Act [Chapter 66, Article 5, Part 6 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 period specified in Subsection B 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.

C. The suspension period for failure to appear or failure to remit the penalty assessment shall, at the discretion of the director, be extended indefinitely subject to the provisions of Subsection B of Section 66-5-30 NMSA 1978.

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.

ANNOTATIONS

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.

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.

Construction of provision limiting revocation. - Provision that driver's license is not to be revoked for more than one year under 64-13-62, 1953 Comp. (similar to this section), was enacted prior to the Implied Consent Act (64-22-2.4 to 64-22-2.12, 1953 Comp.) (similar to 66-8-105 to 66-8-112 NMSA 1978), and must be read in conjunction therewith. 1972 Op. Att'y Gen. No. 72-1.

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 1281.

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, repeals 66-5-33 NMSA 1978, as amended by Laws 1981, ch. 360, § 7, relating to the surrender and return of a license and reinstatement fee, effective June 14, 1985. For provisions of former section, see 1984 replacement pamphlet. 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; 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 [66-1-1 NMSA 1978] 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 suspended or 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 for a violation of the Implied Consent Act [66-8-105 to 66-8-112 NMSA 1978], an additional fee of seventy-five dollars ($75.00) is required to be paid to reinstate the driver's license. Fees collected pursuant to this subsection are appropriated to the local governments road fund. The department shall maintain an accounting of the fees collected pursuant to this subsection and shall report that amount upon request to the legislature.

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.

ANNOTATIONS

Cross references. - For the local governments road fund, see 67-3-28.2 NMSA 1978.

The 1988 amendment, effective July 1, 1988, inserted the language at the end of the section, beginning with "except that".

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 1990 amendment, effective May 16, 1990, substituted "one hundred fifty dollars ($150)" for "seventy-five dollars ($75.00)".

The 1995 amendment, effective July 1, 1995, substituted "local governments road fund" for "general fund" in the next to last and last sentences.

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.

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; hearing; review.

A. Upon suspension or revocation of a person's driver's license following conviction or adjudication as a delinquent under any law, ordinance or rule relating to motor vehicles, a person may apply to the department for a license or permit to drive, limited to use allowing him 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 Subsection B of this section or the Ignition Interlock Licensing Act [Chapter 66, Article 5, Part 6 NMSA 1978];

(3) for a limited license when the person'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 or great bodily injury by vehicle, as provided in Section 66-8-101 NMSA 1978.

B. A person whose driver's license is revoked for the first time pursuant to the provisions of Paragraph (1) or (2) of Subsection C of Section 66-8-111 NMSA 1978 may apply for and shall receive a limited license, permit or an ignition interlock license thirty days after suspension or revocation of his license if the person pays every fee, meets the criteria for limited driving privileges established in rules by the department and provides the department with documentation of the following:

(1) that the person is enrolled in a DWI school approved by the traffic safety bureau and an approved alcohol screening program; and

(2) proof of financial responsibility pursuant to the provisions of the Mandatory Financial Responsibility Act [Chapter 66, Article 5, Part 3 NMSA 1978];

C. 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 state highway and transportation department. All money collected under this subsection shall be used for DWI prevention and education programs for elementary and secondary school students. The state highway and transportation department 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.

D. The department, within twenty days of denial of an application for a limited driver's license or permit pursuant to this section, shall afford the applicant a hearing in the county in which the applicant resides, unless the department and the licensee agree that the hearing may be held in some other county. The department may extend the twenty-day period, provided that the extension is in writing and made no later than fifteen days after receipt of an application. Upon hearing, the hearing officer designated by the department may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers. The hearing officer shall

make specific findings as to whether the applicant has shown proof of financial responsibility for the future and enrollment in an approved DWI school and an approved alcohol screening program and meets established uniform criteria for limited driving privileges adopted by rule of the department. The hearing officer shall enter an order either approving or denying the applicant's request for a limited license or permit to drive. If any of the specific findings set forth in this subsection are not found by the hearing officer, the applicant's request for a limited license or permit shall not be approved.

E. A person adversely affected by an order of the hearing officer may seek review within thirty days in the district court in the county in which he resides. On review, it is for the court to determine only whether the applicant met the requirements in this section for issuance of a limited license or permit to drive.

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.

ANNOTATIONS

Cross references. - For definitions of "director" and "division," see 66-1-4.4 NMSA 1978.

For financial responsibility generally, see 66-5-201 NMSA 1978 et seq.

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.

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 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.

2001 amendments. - Laws 2001, ch. 242, § 1, effective July 1, 2001, inserting "or to attend a court-ordered treatment program" in the introductory paragraph of Subsection A; in Subsection B, adding the Paragraph 3(a) designation, redesignating Paragraph (4) as (3)(b), adding Paragraph (3)(c); and adding Paragraph C(5), was approved April 4, 2001. However, this section was also amended by Laws 2001, ch. 47, § 1, effective July 1, 2001, which would have amended the section to read as follows:

"A. Upon suspension or revocation of a person's driver's license following conviction or adjudication as a delinquent under any law, ordinance or rule relating to motor vehicles, a person may apply to the department for a license or permit to drive, limited to use allowing him 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;

"(2) for a limited license when the person's driver's license was revoked pursuant to the provisions of the Implied Consent Act, except as provided in Subsection B of this section;

"(3) for a limited license when the person's license was revoked pursuant to an offense for which the person is a subsequent offender as defined in the Motor Vehicle Code, except that a person who is convicted a second or third time for driving under the influence of intoxicating liquor or drugs may apply for and shall receive a limited license if he complies with the requirements set forth in Subsections C and D of this section; or

"(4) for a limited license when the person's driver's license was revoked pursuant to a conviction for committing homicide by vehicle or great bodily injury by vehicle, as provided in Section 66-8-101 NMSA 1978.

"B. A person whose driver's license is revoked for the first time pursuant to the provisions of Paragraph (1) or (2) of Subsection C of Section 66-8-111 NMSA 1978 or for the second or third time pursuant to the provisions of Paragraph (3) of Subsection C of Section 66-8-111 NMSA 1978 may apply for and shall receive a limited license or permit thirty days after suspension or revocation of his license if the person pays every fee, meets the criteria for limited driving privileges established in rules by the department and provides the department with documentation of the following:

"(1) that the person is enrolled in a DWI school approved by the traffic safety bureau and an approved alcohol screening program;

"(2) proof of financial responsibility pursuant to the provisions of the Mandatory Financial Responsibility Act; and

"(3) if the person's driver's license is revoked pursuant to the provisions of Paragraph (3) of Subsection C of Section 66-8-111 NMSA 1978, proof that each motor vehicle to be operated by the person, if he receives a limited license, shall be equipped with an ignition interlock device installed and operated pursuant to rules adopted by the traffic safety bureau; and:

"(a) proof of gainful employment or gainful self-employment and that the person needs a limited license to travel to and from his place of employment;

"(b) proof that the person is enrolled in school and needs a limited license to travel to and from school; or

"(c) proof that the person is enrolled in a court-ordered treatment program and needs a limited license to travel to and from the treatment program.

"C. A person who is convicted a second or third time for driving under the influence of intoxicating liquor or drugs may apply for and shall receive a limited license thirty days after suspension or revocation of his license if the person pays every fee, meets the criteria for limited driving privileges established in rule by the department and provides the department with documented proof:

"(1) of enrollment in a DWI school approved by the traffic safety bureau and an approved alcohol screening program;

"(2) of financial responsibility pursuant to the provisions of the Mandatory Financial Responsibility Act; and

"(3) of gainful employment or gainful self-employment and that the person needs a limited license to travel to and from his place of employment; or

"(4) of enrollment in school and that the person needs a limited license to travel to and from school; or

"(5) of enrollment in a court-ordered treatment program and that the person needs a limited license to travel to and from the treatment program.

"D. In addition to the requirements set forth in Subsection C of this section, a person who is convicted a second or third time for driving under the influence of intoxicating liquor or drugs shall provide the department with his judgment and sentence. The judgment and sentence shall attest that the person will be on probation for the entire period that a limited license will be in effect and that, as a condition of probation, the person shall provide proof that each motor vehicle to be operated by the person is equipped with an ignition interlock device installed and operated pursuant to rules adopted by the traffic safety bureau. The ignition interlock device shall be installed on the appropriate motor vehicle at the person's expense.

"E. Upon receipt of a fully completed application that complies with statutes and rules for a limited license and payment of the fee specified in this subsection, the department shall issue a limited license or permit to the applicant showing the limitations specified in the approved application. For each limited 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 state highway and transportation department [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 state highway and transportation department 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.

"F. The department, within twenty days of denial of an application for a limited driver's license or permit pursuant to this section, shall afford the applicant a hearing in the county in which the applicant resides, unless the department and the licensee agree that the hearing may be held in some other county. The department may extend the twenty-day period, provided that the extension is in writing and made no later than fifteen days after receipt of an application. Upon hearing, the hearing officer designated by the department may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers. The hearing officer shall make specific findings as to whether the applicant has shown proof of financial responsibility for the future and enrollment in an approved DWI school and an approved alcohol screening program and meets established uniform criteria for limited driving privileges adopted by rule of the department. The hearing officer shall enter an order either approving or denying the applicant's request for a limited license or permit to drive. If any of the specific findings set forth in this subsection are not found by the

hearing officer, the applicant's request for a limited license or permit shall not be approved.

"G. A person adversely affected by an order of the hearing officer may seek review within thirty days in the district court in the county in which he resides. On review, it is for the court to determine only whether the applicant met the requirements in this section for issuance of a limited license or permit to drive."

Because Laws 2001, ch. 47 was approved earlier on March 15, 2001, this section is set out as amended by Laws 2001, ch. 242, § 1. See 12-1-8 NMSA 1978.

The 2003 amendment, effective April 6, 2003, rewrote the section to the extent that a detailed comparison is impracticable.

Provision not restricted to first-time convictions. - There is no indication that 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.

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, 103 N.M. 710, 710 P.2d 745 (Ct. App. 1985).

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. - 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 1998 amendment, effective September 1, 1998, rewrote this section to the extent that a detailed comparison would be impracticable.

The 1999 amendment, effective July 1, 1999, substituted "department" for "division" and "Section 39-3-1.1" for "Section 12-8A-1".

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

Court only determines whether grounds for revocation exist. - The language in 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, 67 N.M. 41, 351 P.2d 449 (1960).

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, 67 N.M. 41, 351 P.2d 449 (1960).

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, 114 N.M. 390, 839 P.2d 134 (Ct. App. 1992).

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 1281.

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.

It is a misdemeanor for any person to:

A. display or cause or permit to be displayed or have in his possession any canceled, revoked or suspended driver's license or permit or commercial driver's license or permit;

B. lend his driver's license or permit or commercial driver's license or permit to any other person or knowingly permit the use of his license or permit by another;

C. display or represent as one's own any driver's license or permit or commercial driver's license or permit not issued to him;

D. fail or refuse to surrender to the division upon its lawful demand any driver's license or permit or commercial driver's license or permit which has been suspended, revoked or canceled;

E. use a false or fictitious name in any application for a driver's license or permit or commercial driver's license or permit or knowingly make a false statement or knowingly conceal a material fact or otherwise commit a fraud in any such application;

F. permit any unlawful use of the driver's license or permit or commercial driver's license or permit issued to him; or

G. do any act forbidden or fail to perform any act required by Sections 66-5-1 through 66-5-47 NMSA 1978 or the provisions of the New Mexico Commercial Driver's License Act [66-5-52 to 66-5-72 NMSA 1978].

History: 1953 Comp., § 64-5-37, enacted by Laws 1978, ch. 35, § 259; 1989, ch. 14, § 22.

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 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.

Any person who makes any false affidavit, or knowingly swears or affirms falsely to any matter or thing required by the terms of the Motor Vehicle Code [66-1-1 NMSA 1978] to be sworn to or affirmed, is guilty of perjury and upon conviction shall be punishable by fine or imprisonment as other persons committing perjury are punishable.

History: 1953 Comp., § 64-5-38, enacted by Laws 1978, ch. 35, § 260.

ANNOTATIONS

Cross references. - For perjury being a fourth-degree felony, see 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, 112 N.M. 615, 817 P.2d 1257 (Ct. App. 1991).

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, 112 N.M. 615, 817 P.2d 1257 (Ct. App. 1991).

66-5-39. Driving while license suspended or revoked; providing penalties.

A. Any person who drives a motor vehicle on any public highway of this state at a time when his privilege to do so is suspended or revoked and who knows or should have known that his license was suspended or 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 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. 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 while 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 under this section, that person shall be punished by imprisonment for not less than seven consecutive days and shall be fined not less than three hundred dollars ($300) or 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 while under the influence of intoxicating liquor or drugs or a violation of the Implied Consent Act. Any municipal ordinance prohibiting driving with a suspended or revoked 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 or 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.

C. The division, upon receiving a record of the conviction of any person under this section upon a charge of driving a vehicle while the license of the person was suspended, shall extend the period of suspension for an additional like period, and, if the conviction was upon a charge of driving 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.

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.

ANNOTATIONS

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".

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.

Nature of offense. - The offense of driving under a suspended or revoked driver's license is a malum prohibitum offense. State v. Herrera, 111 N.M. 560, 807 P.2d 744 (Ct. App. 1991).

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, 111 N.M. 560, 807 P.2d 744 (Ct. App. 1991).

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, N.M. , P.3d (2002).

Sentence mandatory. - The jail sentence provided under 64-13-68, 1953 Comp. (similar to this section), is mandatory. 1959-60 Op. Att'y Gen. No. 60-95.

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, 76 N.M. 429, 415 P.2d 552 (1966).

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, 111 N.M. 560, 807 P.2d 744 (Ct. App. 1991).

Section subject to assimilation under federal law. - The offenses described by this section (driving while license suspended), 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).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 7A Am. Jur. 2d Automobiles and Highway Traffic § 148.

Liability for injury or damage by car driven by unlicensed person, 16 A.L.R. 1108, 35 A.L.R. 62, 38 A.L.R. 1038, 43 A.L.R. 1153, 54 A.L.R. 374, 58 A.L.R. 532, 61 A.L.R. 1190, 78 A.L.R. 1028, 87 A.L.R. 1469, 111 A.L.R. 1258, 163 A.L.R. 1375.

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).

66-5-40. 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.

Liability for injury to or by one operating motor vehicle while under the age prescribed by law, 46 A.L.R. 1067.

Loan of car to unlicensed driver as affecting liability of owner for negligence, 68 A.L.R. 1008, 100 A.L.R. 920, 168 A.L.R. 1364.

Construction, application and effect of legislation making it offense to permit unauthorized or unlicensed person to operate motor vehicle, 69 A.L.R. 978.

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.

"Authorize or knowingly permit" means "know or should have known." Spencer v. Gamboa, 102 N.M. 692, 699 P.2d 623 (Ct. App. 1985).

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, 99 N.M. 371, 658 P.2d 446 (Ct. App. 1983); Spencer v. Gamboa, 102 N.M. 692, 699 P.2d 623 (Ct. App. 1985).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 7A Am. Jur. 2d Automobiles and Highway Traffic § 149.

Loan of car to unlicensed person as affecting liability of owner for negligence, 68 A.L.R. 1008, 100 A.L.R. 920, 168 A.L.R. 1364.

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.

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 in this section was inserted by the compiler. It was not enacted by the legislature, 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. 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.

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.

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.

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 1993 amendment, effective July 1, 1993, added Subsection D.

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.

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 repeals 66-5-45 NMSA 1978, as enacted by Laws 1978, ch. 35, § 267, relating to duplicate licenses and permits, effective July 1, 1985. For provisions of former section, see 1984 Replacement Pamphlet. 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 repeals 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 1989 Replacement Pamphlet.

66-5-47. Photographs; evidence of applicant's age.

A. The department shall reproduce the likeness of drivers, subject to the following conditions:

(1) photographs or other reproductions of the likeness of all persons shall show a full face or front view; and

(2) 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.

B. Each applicant for an initial license or a replacement license shall produce evidence of the applicant's age. Proof of an applicant's age shall be a birth certificate, certified copy of a birth certificate, a church record purporting to show the date of birth and baptism, an acknowledged copy of the church record, a valid passport or other evidence which the secretary deems sufficient. The date of birth shown on any driver's license or any instruction permit issued by the department shall coincide with the date of birth shown on the proof of applicant's age.

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.

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 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.

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 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".

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 64-13-38, 1953 Comp. (similar to 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 division of motor vehicles) 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 [66-5-49 NMSA 1978] 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 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".

The 2000 amendment, effective May 17, 2000, substituted "66-5-71" for "66-5-70".

The 2003 amendment, effective March 19, 2003, substituted "66-5-72" for "66-5-71".

66-5-53. Purpose.

The purpose of the New Mexico Commercial Driver's License Act [66-5-52 to 66-5-72 NMSA 1978] 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 [Chapter 66, Article 5, Part 1A NMSA 1978]:

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 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, which requires the motor vehicle to be placarded under applicable law;

C. "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;

D. "employer" means a person, including the United States, a state and a political subdivision of a state or their agencies or instrumentalities, who owns or leases a commercial motor vehicle or assigns employees to operate such a vehicle;

E. "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;

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

G. "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;

H. "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 or rule pertaining to stopping at or crossing a railroad-highway grade crossing; and

I. "serious traffic violation" means conviction of any of the following if committed when operating a commercial 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 woman by vehicle as defined in Section 66-8-101.1 NMSA 1978 or a municipal ordinance or the law of another state; or

(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.

History: Laws 1989, ch. 14, § 3; 1990, ch. 120, § 29; 1992, ch. 13, § 3; 1998, ch. 17, § 1; 2003, ch. 51, § 2.

ANNOTATIONS

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.

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 1998 amendment rewrote this section to the extent that a detailed comparison would be impracticable. Laws 1998, ch. 17 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.

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).

66-5-55. Driver's licenses; limitation of number.

As of the effective date of the New Mexico Commercial Driver's License Act [66-5-52 to 66-5-72 NMSA 1978], 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.

An employer shall not 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 [Chapter 66, Article 5, Part 1A NMSA 1978];

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.

ANNOTATIONS

The 1998 amendment inserted "require," following "allow," in the undesignated paragraph; added Subsection C; and made minor stylistic changes. Laws 1998, ch. 17 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.

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.

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 may not issue a commercial driver's license to a person unless that person is a resident of New Mexico and has passed a knowledge and skills test for driving a commercial motor vehicle and for related endorsements 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 specified by this section.

C. The director may waive the requirement of a state administered skills test specified in this section for a commercial driver's license applicant who complies with the other provisions of the New Mexico Commercial Driver's License Act [66-5-52 to 66-5-72 NMSA 1978] through any pertinent rules, regulations or contractual agreements with the state department of public education, other governments or private entities.

History: Laws 1989, ch. 14, § 9.

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 six months. Only one renewal or reissuance may be granted within a two-year period. 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.

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; and

(7) any other information required by the department.

B. When a licensee changes his name or residence or mailing address, an application for a duplicate [replacement] license shall be made as provided in Section 66-5-20 NMSA 1978.

History: Laws 1989, ch. 14, § 12; 1992, ch. 13, § 4.

ANNOTATIONS

Bracketed material. - The bracketed material in Subsection B was inserted by the compiler; it was not enacted by the legislature, and it is not a part of the law. Laws 1999, ch. 76, § 1 amended 66-5-20 NMSA 1978, substituting "replacement licence" for "duplicate license", effective July 1, 1999.

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; content.

The commercial driver's license shall be marked "commercial driver's license" or "CDL". It shall include, but not be limited to, the following information:

A. the name and residential address of the person;

B. the person's color picture;

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 or vehicles 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 is valid.

History: Laws 1989, ch. 14, § 13; 1991, ch. 150, § 1; 1992, ch. 13, § 5.

ANNOTATIONS

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.

The 1992 amendment, effective April 1, 1992, deleted "and hair" following "eye" in Subsection C and made minor stylistic changes in Subsection F.

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. 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.

History: Laws 1989, ch. 14, § 14; 1992, ch. 13, § 6; 1995, ch. 135, § 19; 1998, ch. 17, § 3.

ANNOTATIONS

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.

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 1998 amendment, 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. Laws 1998, ch. 17 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.

66-5-66. Applicant record information; information exchange.

A. Before issuing a commercial driver's license, the division shall obtain pertinent driving record information from each state where the applicant has been licensed, through a multistate data base, or from each state.

B. The taxation and revenue department shall have 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].

History: Laws 1989, ch. 14, § 15.

66-5-67. Expiration and renewal; staggered licensing during implementation period.

A. Except as provided in Subsection C 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-five 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.

History: Laws 1989, ch. 14, § 16; 1992, ch. 13, § 7; 1999, ch. 222, § 3.

ANNOTATIONS

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.

The 1999 amendment, effective July 1, 1999, deleted former Subsection C, and added Subsections C and D.

66-5-68. Disqualification.

A. The department shall disqualify a person from driving a commercial motor vehicle for a period of not less than one year 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]; or

(2) is convicted of a violation of:

(a) driving a commercial motor vehicle 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; or

(c) using a commercial motor vehicle in the commission of any felony.

B. 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 A of this section occur while transporting a hazardous material required to be placarded.

C. 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 A of this section, or any combination of those offenses, arising from two or more separate incidents, but the secretary may issue regulations 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.

D. The department shall disqualify a person from driving a commercial motor vehicle for life if the person uses a commercial motor vehicle in the commission of any felony involving the manufacture, distribution or dispensing of a controlled substance or the possession with intent to manufacture, distribute or dispense a controlled substance.

E. 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.

F. The department shall disqualify a person from driving a commercial motor vehicle for a period of 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. The department shall disqualify a person from driving a commercial motor vehicle for a period of 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.

G. When a person is disqualified from driving a commercial motor vehicle, any commercial driver's license held by that person is invalidated without 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.

H. 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 nonresident commercial driver's privileges, the department shall, within ten days, notify the licensing authority of the state that issued the commercial driver's license.

I. For purposes of this section, the term "convicted" includes a license revocation pursuant to the Implied Consent Act or the implied consent act of another state.

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.

ANNOTATIONS

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.

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 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.

2003 amendments. - Laws 2003, ch. 90, § 2, effective March 28, 2003, deleting "Section 66-5-68.1 NMSA 1978" preceding "Section 66-8-102 NMSA 1978" in Subparagraph A(2)(a), was approved March 28, 2003. This section was also amended by Laws 2003, ch. 51, § 5, effective March 19, 2003, by substituting "without a separate proceeding" for "without separate proceeding of any kind" in Subsection G; by inserting a new Subsection H, regarding railroad-highway grade crossings; and by redesignating Subsections H and I as Subsections I and J. This section is set out as amended by Laws 2003, ch. 90, § 2. See 12-1-8 NMSA 1978.

Hazardous Materials Transportation Act. - The federal Hazardous Materials Transportation Act, referred to in Subsection F, 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.

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. Persons under influence of alcohol. [Repealed.]

ANNOTATIONS

Repeals. - Laws 2003, ch. 90, § 9 repeals 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 2001 Replacement Volume.

66-5-69. Notification of traffic convictions.

Within ten days after receiving a report of the conviction of any holder of a nonresident commercial driver's license for any violation of state law or local ordinance relating to motor vehicle traffic control, other than parking violations, committed in a commercial motor vehicle, the division, after receipt of conviction information required pursuant to Section 66-5-28 NMSA 1978, shall notify the driver's licensing authority in the licensing state of the conviction in this state.

History: Laws 1989, ch. 14, § 18.

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 inserted "minimum" preceding "standards", inserted "established by the federal highway administration", and deleted "New Mexico" preceding "commercial driver's licenses,". Laws 1998, ch. 17 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.

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 one thousand one hundred dollars ($1,100) or more than two thousand seven hundred fifty dollars ($2,750), in addition to disqualification as provided in Subsection C of this section.

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).

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.

ANNOTATIONS

Cross references. - For definition of "out-of-service order," see 66-5-54 NMSA 1978.

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.

The 2003 amendment, effective March 19, 2003, rewrote Subsections A and B.

Applicability. - Laws 1998, ch. 17, § 6 makes the provisions of the act applicable to commercial driver's licenses issued on or after January 1, 1998.

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.

History: Laws 2003, ch. 51, § 7.

ANNOTATIONS

Emergency clauses. - Laws 2003, ch. 51, § 17 makes the act effective immediately. Approved March 19, 2003.

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 64-24-1 and 64-24-2, 1953 Comp., the Automobile Guest Statute, as 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 manifest intent of this statute (this section and 66-5-104 NMSA 1978) to accomplish due process upon the defendant nonresident motorist by service of process (summons) 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, 45 N.M. 119, 112 P.2d 506 (1941).

"Nonresident". - Intent of the legislature in writing this section and 66-5-104 NMSA 1978 was to have the word "nonresident" include every nonresident whether a corporation or an individual. Crawford v. Refiners Coop. Ass'n, 71 N.M. 1, 375 P.2d 212 (1962).

"Process". - The word "process" in this section and 66-5-104 NMSA 1978 is used in the sense of "summons." State ex rel. Dresden v. District Court, 45 N.M. 119, 112 P.2d 506 (1941).

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 38-1-16 NMSA 1978 concerning personal service out of state, where the driver was completely appraised 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 66-5-104 NMSA 1978). Crawford v. Refiners Coop. Ass'n, 71 N.M. 1, 375 P.2d 212 (1962).

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, 71 N.M. 1, 375 P.2d 212 (1962).

Appointment of administrator for nonresident decedent's estate. - Under 31-1-3, 1953 Comp. (since repealed), a right of indemnity under a liability insurance policy issued to nonresident decedent by company authorized to do business in this state and subject to process in this state was sufficient to support appointment of administrator for the estate and county in which he died following automobile collision, although no judgment had been recovered against decedent's estate making the right of indemnity a debt. Miller v. Stiff, 62 N.M. 383, 310 P.2d 1039 (1957).

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, 51 N.M. 427, 187 P.2d 387 (1947).

Residence precludes service on secretary of state. - A finding which was necessarily made though not expressed in action for injuries suffered in automobile accident, to the effect that defendants were New Mexico residents at time of the

accident, would preclude service of process on secretary of state, and not be disturbed on appeal. Fisher v. Terrell, 51 N.M. 427, 187 P.2d 387 (1947).

To confer jurisdiction under this section and 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, 68 N.M. 140, 359 P.2d 767 (1961).

Jurisdiction may be proved during trial if nonresident defendants. - Because driver of automobile, which negligently collided with the automobile of plaintiffs causing personal injuries to them and property damage to the automobile, was an employee, agent and chauffeur for the defendants, all of whom were owners of the automobile or had an interest therein, and 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 of statute which permits action against bus companies for injury to person or property to be brought in any county through or into which the route passes and providing for service of process in such cases, 81 A.L.R. 777.

Construction and application of statute providing for constructive or substituted service of process on nonresident motorist, 82 A.L.R. 768, 96 A.L.R. 594, 125 A.L.R. 457, 138 A.L.R. 1464, 155 A.L.R. 333.

Constitutionality of statute providing for substituted or constructive service upon nonresident in action for tort in connection with automobile, 99 A.L.R. 130.

Who is subject to constructive or substituted service of process under statutes providing for such service on nonresident motorist, 155 A.L.R. 333, 53 A.L.R.2d 1164.

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 generally, see 38-1-6 NMSA 1978.

Secretary of state may not charge a fee where service of process on nonresident operators of motor vehicles is made upon him. 1935-36 Op. Att'y Gen. 118.

"Nonresident". - Intent of the legislature in writing 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, 71 N.M. 1, 375 P.2d 212 (1962).

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 38-1-16 NMSA 1978 concerning personal service out of state, where the driver was completely appraised 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 66-5-104 NMSA 1978). Crawford v. Refiners Coop. Ass'n, 71 N.M. 1, 375 P.2d 212 (1962).

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, 71 N.M. 1, 375 P.2d 212 (1962).

To confer jurisdiction under 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 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, 68 N.M. 140, 359 P.2d 767 (1961).

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, 45 N.M. 119, 112 P.2d 506 (1941).

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, 45 N.M. 119, 112 P.2d 506 (1941).

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, 46 N.M. 376, 129 P.2d 338 (1942).

Law reviews. - For comment on 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

I. General Consideration.
II. The Contract.

I. GENERAL CONSIDERATION.

Cross references. - For workmen's compensation provisions, see 52-1-1 NMSA 1978 et seq.

For provisions relating to operator's and chauffeur's licenses generally, see 66-5-1 to 66-5-51 NMSA 1978.

Compiler's notes. - Many of the following cases and opinions were decided under former law.

Legislative intent. - By enacting the financial responsibility laws, 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.

Scope of act's influence. - The Financial Responsibility Act, 64-24-42 to 64-24-104, 1953 Comp. (similar to 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 (64-24-42 to 64-24-104, 1953 Comp., similar to 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, N.M. , 66 P.3d 980.

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. It is thus an attempt to provide coverage in the insured's own policy where it does not exist on the other side, thus to have insurance coverage available in all events. American Mut. Ins. Co. v. Romero, 428 F.2d 870 (10th Cir. 1970).

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. The owner or person covered by the policy must have been brought within the scope of the statute by prior accident before its provisions applied. Larson v. Occidental Fire & Cas. Co., 79 N.M. 562, 446 P.2d 210 (1968), overruled on other grounds, 103 N.M. 110, 703 P.2d 887 (1985).

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., 119 N.M. 122, 888 P.2d 1004 (Ct. App. 1994).

Subsection A(2) adopts the initial permission rule covering any deviation short of theft or the like. Allstate Ins. Co. v. Jensen, 109 N.M. 584, 788 P.2d 340 (1990).

By conditioning insurance coverage on the word "permission" in the statutory omnibus clause, the legislature meant to exclude unlawful takings such as theft. In decisions adopting the initial permission rule this has been a recognized limitation. Wrongful intent to deprive the owner of his property bars coverage. Allstate Ins. Co. v. Jensen, 109 N.M. 584, 788 P.2d 340 (1990).

The initial permission rule is not limited to "certified" motor vehicle liability policies. Kitchens v. Houston Gen. Ins. Co., 119 N.M. 799, 896 P.2d 479 (1995).

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., 119 N.M. 799, 896 P.2d 479 (1995).

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 Property & Cas., 119 N.M. 397, 891 P.2d 538 (1995).

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, 109 N.M. 584, 788 P.2d 340 (1990); Kitchens v. Houston Gen. Ins. Co., 119 N.M. 799, 896 P.2d 479 (1995).

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 Property & Cas., 119 N.M. 397, 891 P.2d 538 (1995).

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. American 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, 88 N.M. 483, 542 P.2d 434 (Ct. App. 1975).

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 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).

Borrowed vehicle used in high-speed chase. - Insurer had no duty to defend a driver who had consumed an enormous amount of beer prior to borrowing the insured's truck, which was subsequently involved in a high-speed chase resulting in personal injuries and damage to pursuing police vehicles. Allstate Ins. Co. v. Jensen, 109 N.M. 584, 788 P.2d 340 (1990).

Joinder of insurance company. - Under former 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 legislative, 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.

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.

II. THE CONTRACT.

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, 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).

Policy provisions to the contrary. - Although an endorsement or rider attached to a policy provides that the insurance afforded by the policy shall not apply while the automobile is being operated outside the limits of any established military or naval reservation unless it is being operated by the named insured or his spouse, unless it is being operated by a garage or service station in connection with repairing and movements incidental to service and repair, or unless it is being operated by any other qualified operator while accompanied by the named insured or his spouse, where the policy provides that the insurance should comply with the provisions of the motor vehicle financial responsibility law of any state which should be applicable with respect to such liability, at the time of the accident in which plaintiffs sustained injuries, the defendant was using and operating the automobile with the consent of the insured, a valid judgment was rendered against the defendant for such personal injuries, and the judgment has not been paid, under the policy with the provisions of the act incorporated therein, the liability of the insuree to pay plaintiffs the amount of such judgment is absolute. Farmers Ins. Exch. v. Ledesma, 214 F.2d 495 (10th Cir. 1954).

The obligation to deal fairly and honestly rests equally upon the insurer and the insured. Modisette v. Foundation Reserve Ins. Co., 77 N.M. 661, 427 P.2d 21 (1967).

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., 77 N.M. 661, 427 P.2d 21 (1967).

A policy of insurance is a contract between insurer and insured. Modisette v. Foundation Reserve Ins. Co., 77 N.M. 661, 427 P.2d 21 (1967).

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., 77 N.M. 661, 427 P.2d 21 (1967).

Parties' intent irrelevant if misrepresentations made. - The general rule, and the rule consistent with principles of contract and the duty of fair dealing, which is the duty imposed upon both the insurer and the insured, 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., 77 N.M. 661, 427 P.2d 21 (1967).

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., 77 N.M. 661, 427 P.2d 21 (1967).

Question of materiality for trier of facts and burden on company. - The question of materiality or reliance by the defendant ordinarily is for the trier of the facts, and the burden of proof is on the defendant insurance company. Tsosie v. Foundation Reserve Ins. Co., 77 N.M. 671, 427 P.2d 29 (1967).

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., 77 N.M. 671, 427 P.2d 29 (1967).

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., 77 N.M. 661, 427 P.2d 21 (1967).

Policy voidable if information withheld and misrepresentations made were material. - The representations being false and material to the risk, and the defendant

having relied thereon in entering into the contract, the necessary grounds to void the policy were present. Modisette v. Foundation Reserve Ins. Co., 77 N.M. 661, 427 P.2d 21 (1967).

An insurer may waive right to assert forfeiture, or be estopped from asserting this right. Before an insurer can be held to have waived, or be estopped from asserting a right of forfeiture, it must have had knowledge of the facts. Modisette v. Foundation Reserve Ins. Co., 77 N.M. 661, 427 P.2d 21 (1967).

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., 77 N.M. 671, 427 P.2d 29 (1967).

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., 117 N.M. 385, 872 P.2d 358 (1994).

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., 103 N.M. 105, 703 P.2d 882 (1985).

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 [66-5-201 to 66-5-239 NMSA 1978] 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".

Legislative intent. - By enacting the financial responsibility laws, 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.

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, 109 N.M. 584, 788 P.2d 340 (1990).

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.

66-5-202. Repealed.

ANNOTATIONS

Repeals. - Laws 1990, ch. 120, § 45 repeals 66-5-202 NMSA 1978, as amended by Laws 1987, ch. 268, § 27, relating to definitions, effective July 1, 1990. For provisions of former section, see 1989 Replacement Pamphlet. 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 [66-5-201 to 66-5-239 NMSA 1978] 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 [66-5-201 to 66-5-239 NMSA 1978] may appeal to the hearing officer of the department for a hearing to be held within twenty days of the receipt by the department of the appeal. A person who continues 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.

ANNOTATIONS

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.

Repeals and reenactments. - Laws 1983, ch. 318, § 5, repeals former 66-5-204 NMSA 1978, relating to court review of orders or acts of the director of the motor vehicle division, and enacts the above section.

The 1998 amendment, effective September 1, 1998, rewrote the second and third sentences and made minor stylistic changes throughout the section.

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".

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

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 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 [66-5-201 to 66-5-239 NMSA 1978].

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 he 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 is not in effect or a surety bond or evidence of a sufficient cash deposit with the state treasurer.

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 and upon conviction shall be sentenced to a fine not to exceed three hundred dollars ($300).

History: 1978 Comp., § 66-5-205, enacted by Laws 1983, ch. 318, § 6; 1991, ch. 192, § 2; 1998, ch. 34, § 5.

ANNOTATIONS

Repeals and reenactments. - Laws 1983, ch. 318, § 6, repeals former 66-5-205 NMSA 1978, relating to application of the provisions of the Financial Responsibility Act, and enacts the above section.

The 1991 amendment, effective June 14, 1991, added "penalties" at the end of the catchline and added Subsection E.

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".

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)(decided under former 64-24-45 and 64-24-50, 1953 Comp.)

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 [66-5-201 to 66-5-239 NMSA 1978] 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 [66-5-201 to 66-5-239 NMSA 1978]. 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 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.

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 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.

66-5-205.2. Repealed.

ANNOTATIONS

Repeals. - Laws 1991, ch. 174, § 1 repeals 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 1989 Replacement Pamphlet.

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 [Chapter 66, Article 5, Part 3 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; 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 [Chapter 66, Article 5, Part 3 NMSA 1978] 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.

ANNOTATIONS

Tort Claims Act - The Federal Tort Claims Act, referred to in this section, is codified as 28 U.S.C. § 2671 et seq.

Effective dates. - Laws 2003, ch. 171 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 2003, 90 days after adjournment of the legislature.

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 [66-5-201 to 66-5-239 NMSA 1978].

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

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.

Recompilations. - Laws 1983, ch. 318, § 7, recompiles 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.

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)(decided under former law).

66-5-207. Exempt motor vehicles.

The following motor vehicles are exempt from the Mandatory Financial Responsibility Act [66-5-201 to 66-5-239 NMSA 1978]:

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

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.

Recompilations. - Laws 1983, ch. 318, § 8, recompiles former 66-5-207 NMSA 1978, relating to the meaning of "judgment," as 66-5-209 NMSA 1978, effective January 1, 1984.

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, 120 N.M. 557, 903 P.2d 1390 (1995).

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, 120 N.M. 557, 903 P.2d 1390 (1995).

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 66-5-207 NMSA 1978 which explicitly exempts self-insured vehicles. Cordova v. Wolfel, 120 N.M. 557, 903 P.2d 1390 (1995).

66-5-208. Evidence of financial responsibility; amounts and conditions.

"Evidence of financial responsibility," as used in the Mandatory Financial Responsibility Act [66-5-201 to 66-5-239 NMSA 1978], 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 1978 Comp., § 66-5-208 by Laws 1983, ch. 318, §§ 7, 9.

ANNOTATIONS

Repeals. - Laws 1983, ch. 318, § 42, repeals former 66-5-208 NMSA 1978, relating to proof required upon certain convictions, effective January 1, 1984.

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. The owner or person covered by the policy must have been brought within the scope of the statute by a prior accident before its provisions applied. Larson v. Occidental Fire & Cas. Co., 79 N.M. 562, 446 P.2d 210 (1968), overruled on other grounds, 103 N.M. 110, 703 P.2d 887 (1985).

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. - The phrases "the limits of the financial responsibility law of New Mexico" and "financial responsibility limits of New Mexico" in the arbitration clause in a motor vehicle liability insurance policy meant solely the $25,000 mandatory amount for bodily injury required in the New Mexico Mandatory Financial Responsibility Act, not the total of three $25,000 uninsured motorists coverages based on the principle of judicial stacking. Allstate Ins. Co. v. Perea, 2000-NMCA-070, 129 N.M. 166, 8 P.3d 166.

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, 117 N.M. 547, 873 P.2d 979 (1994).

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 [66-5-201 to 66-5-239 NMSA 1978], 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 1978 Comp., § 66-5-209 by Laws 1983, ch. 318, §§ 8, 10.

ANNOTATIONS

Repeals. - Laws 1983, ch. 318, § 42, repeals 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 1978 Comp., § 66-5-210 by Laws 1983, ch. 318, § 11.

ANNOTATIONS

Repeals. - Laws 1983, ch. 318, § 42, repeals former 66-5-210 NMSA 1978, relating to actions in respect to unlicensed persons, effective January 1, 1984.

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 1978 Comp., § 66-5-211 by Laws 1983, ch. 318, § 41.

ANNOTATIONS

Repeals. - Laws 1983, ch. 318, § 43, repeals 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 [66-5-201 to 66-5-239 NMSA 1978] 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 1978 Comp., § 66-5-212 by Laws 1983, ch. 318, § 12.

ANNOTATIONS

Recompilations. - Laws 1983, ch. 318, § 11, recompiles 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 1978 Comp., § 66-5-213 by Laws 1983, ch. 318, § 13.

ANNOTATIONS

Recompilations. - Laws 1983, ch. 318, § 41, recompiles 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 [66-5-201 to 66-5-239 NMSA 1978].

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 1978 Comp., § 66-5-214 by Laws 1983, ch. 318, § 14.

ANNOTATIONS

Recompilations. - Laws 1983, ch. 318, § 12, recompiles 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. 1957-58 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. 1957-58 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 [66-5-201 to 66-5-239 NMSA 1978] 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 1978 Comp., § 66-5-215 by Laws 1983, ch. 318, § 15.

ANNOTATIONS

Repeals. - Laws 1983, ch. 318, § 42, repeals 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., 104 N.M. 47, 716 P.2d 238 (1986).

Policy held ambiguous. - Where on its face, a limitation clause appears to limit liability for bodily injury to the statutory minimum of $15,000 per person or $30,000 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., 98 N.M. 166, 646 P.2d 1230 (1982).

Arbitration award provision valid. - An insurance policy that gave the insurer the right to request a trial de novo if an arbitration award exceeded "the minimum limit for bodily injury liability specified by financial responsibility," did not violate public policy. Bruch v. CNA Ins. Co., 117 N.M. 211, 870 P.2d 749 (1994).

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 1978 Comp., § 66-5-216 by Laws 1983, ch. 318, § 16.

ANNOTATIONS

Repeals. - Laws 1983, ch. 318, § 42, repeals 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 1978 Comp., § 66-5-217 by Laws 1983, ch. 318, § 17.

ANNOTATIONS

Repeals. - Laws 1983, ch. 318, § 42, repeals 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.

Purpose for suspension penalty. - Penalty imposed in suspension is not merely to protect accident victim, but to enforce a public policy that financially irresponsible motorists shall not be allowed to injure their fellows with impunity. 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 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 [66-5-201 to 66-5-239 NMSA 1978], 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 1978 Comp., § 66-5-218 by Laws 1983, ch. 318, § 18; 1998, ch. 34, § 9.

ANNOTATIONS

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.

Recompilations. - Laws 1983, ch. 318, § 13, recompiles 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.

66-5-219. Repealed.

ANNOTATIONS

Repeals. - Laws 1998, ch. 34, § 19 repeals 66-5-219 NMSA 1978, 1953 Comp. (§ 64-24-84), 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 1994 Replacement Pamphlet.

Laws 1983, ch. 318, § 42, repeals former 66-4-219, 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 1978 Comp., § 66-5-220 by Laws 1983, ch. 318, § 20; 1998, ch. 34, § 10.

ANNOTATIONS

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".

Repeals. - Laws 1983, ch. 318, § 42, repeals former 66-5-220, relating to suspension continuing until judgments paid and proof given, effective January 1, 1984.

66-5-221. Repealed.

ANNOTATIONS

Repeals. - Laws 1998, ch. 34, § 19 repeals 66-5-221 NMSA 1978, 1953 Comp., § 64-5-230, 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 1994 Replacement Pamphlet.

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 _____ (name of insured) by
_____
_____.

(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 1978 Comp., § 66-5-222, by Laws 1983, ch. 318, § 41; 1998, ch. 34, § 11.

ANNOTATIONS

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.

Recompilations. - Laws 1983, ch. 318, § 15, recompiles 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.

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., 119 N.M. 122, 888 P.2d 1004 (Ct. App. 1994).

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., 105 N.M. 220, 731 P.2d 363 (1986).

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., 117 N.M. 385, 872 P.2d 358 (1994).

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., 119 N.M. 122, 888 P.2d 1004 (Ct. App. 1994).

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., 119 N.M. 122, 888 P.2d 1004 (Ct. App. 1994).

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 repeals 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 1994 Replacement Pamphlet.

66-5-224. Act not to affect other policies.

A. The Mandatory Financial Responsibility Act [66-5-201 to 66-5-239 NMSA 1978] 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 1978 Comp., § 66-5-224 by Laws 1983, ch. 318, § 23.

ANNOTATIONS

Recompilations. - Laws 1983, ch. 318, § 17, recompiles 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 1978 Comp., § 66-5-225 by Laws 1983, ch. 318, § 24.

ANNOTATIONS

Repeals. - Laws 1983, ch. 318, § 42, repeals 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 1978 Comp., § 66-5-226 by Laws 1983, ch. 318, § 25.

ANNOTATIONS

Recompilations. - Laws 1983, ch. 318, § 18, recompiles 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 [66-5-201 to 66-5-239 NMSA 1978], 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 1978 Comp., § 66-5-227 by Laws 1983, ch. 318, § 26.

ANNOTATIONS

Recompilations. - Laws 1983, ch. 318, § 19, recompiles 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 1978 Comp., § 66-5-228 by Laws 1983, ch. 318, § 27; 1998, ch. 34, § 12.

ANNOTATIONS

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".

Repeals. - Laws 1983, ch. 318, § 42, repeals former 66-5-228 NMSA 1978, relating to certificate furnished by nonresident as proof, effective January 1, 1984.

66-5-229. Duration of evidence; when filing of evidence may be waived.

A. 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 thereto any money deposited pursuant to the Mandatory Financial Responsibility Act [66-5-201 to 66-5-239 NMSA 1978] 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 his license and registration to the department.

B. Provided, however, that 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 he has been released from all of his 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. Every owner or operator of a vehicle subject to the requirements of 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. The failure to comply with this subsection shall be a misdemeanor and shall be punishable by the penalty set forth in Section 66-8-7 NMSA 1978; provided that no person charged with violating this section shall be convicted if he 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 1978 Comp., § 66-5-229 by Laws 1983, ch. 318, § 28; 1991, ch. 192, § 3; 1998, ch. 34, § 13.

ANNOTATIONS

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.

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.

Recompilations. - Laws 1983, ch. 318, § 20, recompiles former 66-5-229 NMSA 1978, relating to default by a nonresident insurer, as 66-5-220 NMSA 1978, effective January 1, 1984.

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 [66-5-201 to 66-5-239 NMSA 1978] 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 1978 Comp., § 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 1978 Comp., § 66-5-231 by Laws 1983, ch. 318, § 30.

ANNOTATIONS

Recompilations. - Laws 1983, ch. 318, § 41, recompiles 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". - Strict construction dictates that the word "forges," as used in this section, be defined using its common law meaning, i.e., 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 [66-5-201 to 66-5-239 NMSA 1978], 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

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.

Recompilations. - Laws 1983, ch. 318, § 22, recompiles 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.

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

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.

Recompilations. - Laws 1983, ch. 318, § 23, recompiles 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.

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 [66-5-201 to 66-5-239 NMSA 1978]. 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

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".

Recompilations. - Laws 1983, ch. 318, § 24, recompiles former 66-5-234 NMSA 1978, relating to bond as proof, as 66-5-225 NMSA 1978, effective January 1, 1984.

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 [66-5-201 to 66-5-239 NMSA 1978], 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, repeals former 66-5-235 NMSA 1978, relating to when a bond shall constitute the lien, and enacts the above section.

The 1989 amendment, effective June 16, 1989, added "penalties" to the catchline, designated the formerly undesignated provisions as Subsection A, and added Subsection B.

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 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".

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 [66-5-201 to 66-5-239 NMSA 1978], but only if evidence of financial responsibility is not submitted within twenty days after the date of the mailing of the department's demand therefor. The department shall notify the person that he may request a hearing within twenty days after the date of the mailing of the department's demand as provided under this subsection.

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.

ANNOTATIONS

Repeals and reenactments. - Laws 1983, ch. 318, § 35, repeals former 66-5-236 NMSA 1978, relating to action on bond, and enacts the above section.

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 [66-5-201 to 66-5-239 NMSA 1978] 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 1978 Comp., § 66-5-237 by Laws 1983, ch. 318, § 36.

ANNOTATIONS

Recompilations. - Laws 1983, ch. 318, § 25, recompiles 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 [66-5-201 to 66-5-239 NMSA 1978] 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 1978 Comp., § 66-5-238 by Laws 1983, ch. 318, § 37.

ANNOTATIONS

Recompilations. - Laws 1983, ch. 318, § 26, recompiles 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, repeals 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, provides 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, recompiles 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, repeals 66-5-241 NMSA 1978, relating to other proof of financial responsibility, effective January 1, 1984.

66-5-242. Recompiled.

ANNOTATIONS

Recompilations. - Laws 1983, ch. 318, § 28, recompiles 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, repeals 66-5-243 NMSA 1978, 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, recompiles 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, recompiles 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, repeals 66-5-246 NMSA 1978, relating to self-insurers, effective January 1, 1984.

66-5-247. Recompiled.

ANNOTATIONS

Recompilations. - Laws 1983, ch. 318, § 36, recompiles 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, recompiles 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, repeals 66-5-249 to 66-5-277 NMSA 1978 (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.

Compiler's notes. - Laws 1983, ch. 16, §§ 1 and 2, purportedly amended 66-5-257 and 66-5-267 NMSA 1978, respectively. These amendments were not given effect because of the later repeal of 66-5-257 and 66-5-267 NMSA 1978 by Laws 1983, ch. 318, § 44. See 12-1-8 NMSA 1978.

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

I. General Consideration.
II. Coverage.
A. Generally.
B. Amount.

I. GENERAL CONSIDERATION.

Cross references. - For the superintendent of insurance generally, see 59A-2-1 NMSA 1978 et seq.

Severability clauses. - Laws 1983, ch. 318, § 45, provides for the severability of the act if any part or application thereof is held invalid.

Legislative purpose. - Legislative intent was to expand insurance coverage to protect the public from damage or injury caused by other motorists who were not insured and could not make the impaired party whole. Sandoval v. Valdez, 91 N.M. 705, 580 P.2d 131 (Ct. App. 1978).

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, 91 N.M. 705, 580 P.2d 131 (Ct. App. 1978); Wood v. Millers Nat'l Ins. Co., 96 N.M. 525, 632 P.2d 1163 (1981).

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., 108 N.M. 807, 780 P.2d 633 (1989).

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., 111 N.M. 154, 803 P.2d 243 (1990).

Design of uninsured motorists' insurance. - The uninsured or unknown motorist statutes are designed to protect the injured party from the uninsured or unknown motorist. The statutes are not designed to protect the insurance company from the injured party. Sandoval v. Valdez, 91 N.M. 705, 580 P.2d 131 (Ct. App. 1978).

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, 97 N.M. 470, 641 P.2d 501 (1982).

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).

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., 111 N.M. 154, 803 P.2d 243 (1990).

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., 120 N.M. 724, 905 P.2d 1128 (Ct. App. 1995).

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.

"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., 96 N.M. 525, 632 P.2d 1163 (1981).

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., 96 N.M. 27, 627 P.2d 869 (1981).

A direct action by an insured against an insurer for uninsured motorist benefits is permissible. Wood v. Millers Nat'l Ins. Co., 96 N.M. 525, 632 P.2d 1163 (1981).

Reformation of "escape hatch" arbitration clause. - Notwithstanding the policy provision providing for de novo judicial review, an insured may enforce an arbitration award of uninsured/under-insured motorist benefits to the extent of the minimum limits as set forth in the Mandatory Financial Responsibility Act (66-5-201 to 66-5-239 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. Padilla v. State Farm Mut. Auto. Ins. Co., 2002-NMCA-001, 131 N.M. 419, 38 P.3d 187.

Construction of arbitration clause. - The phrases "the limits of the financial responsibility law of New Mexico" and "financial responsibility limits of New Mexico" in the arbitration clause in a motor vehicle liability insurance policy meant solely the $25,000 mandatory amount for bodily injury required in the New Mexico Mandatory Financial Responsibility Act, not the total of three $25,000 uninsured motorists coverages based on the principle of judicial stacking. Allstate Ins. Co. v. Perea, 2000-NMCA-070, 129 N.M. 166, 8 P.3d 166.

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 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, 91 N.M. 705, 580 P.2d 131 (Ct. App. 1978).

An insurer under an uninsured motorist clause in the policy is governed by the contract statute of limitations in 37-1-3 NMSA 1978. To allow an insurer to lessen the period of time to bring an action on an insurance policy from six years to one year by means of a contract provision would thwart the purpose of this section. Sandoval v. Valdez, 91 N.M. 705, 580 P.2d 131 (Ct. App. 1978) (specially concurring opinion) Ellis v. Cigna Property & Cas. Cos., 1999-NMSC-034, 128 N.M. 54, 989 P.2d 429;.

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 Property & Cas. Cos., 1999-NMSC-034, 128 N.M. 54, 989 P.2d 429.

Lawful delegation of authority to superintendent. - The authority granted by 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, 86 N.M. 325, 523 P.2d 1351 (1974), overruled on other grounds Foundation Reserve Ins. Co. v. Marin, 109 N.M. 533, 787 P.2d 452 (1990).

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, 91 N.M. 705, 580 P.2d 131 (Ct. App. 1978)(specially concurring opinion).

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., 106 N.M. 22, 738 P.2d 516 (1987).

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., 111 N.M. 154, 803 P.2d 243 (1990); Kaiser v. DeCarrera, 1996-NMSC-050, 122 N.M. 221, 923 P.2d 588.

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., 111 N.M. 154, 803 P.2d 243 (1990); Kaiser v. DeCarrera, 1996-NMSC-050, 122 N.M. 221, 923 P.2d 588.

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.

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., 1997-NMCA-124, 124 N.M. 323, 950 P.2d 297.

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., 1997-NMCA-124, 124 N.M. 323, 950 P.2d 297.

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 59A-18-12 NMSA 1978. Vigil v. Rio Grande Ins., 1997-NMCA-124, 124 N.M. 323, 950 P.2d 297.

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., 1997-NMCA-124, 124 N.M. 323, 950 P.2d 297.

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., 111 N.M. 179, 803 P.2d 664 (1990).

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, 107 N.M. 568, 761 P.2d 446 (Ct App. 1988).

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, 107 N.M. 568, 761 P.2d 446 (Ct App. 1988).

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.

II. COVERAGE.

A. GENERALLY.

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., 98 N.M. 166, 646 P.2d 1230 (1982).

"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., 103 N.M. 216, 704 P.2d 1092 (1985).

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 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., 87 N.M. 327, 533 P.2d 100 (1975).

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, 109 N.M. 533, 787 P.2d 452 (1990).

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., 109 N.M. 555, 787 P.2d 835 (1990).

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., 120 N.M. 724, 905 P.2d 1128 (Ct. App. 1995).

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., 120 N.M. 724, 905 P.2d 1128 (Ct. App. 1995).

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., 104 N.M. 756, 726 P.2d 1386 (1986).

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 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., 98 N.M. 166, 646 P.2d 1230 (1982).

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., 98 N.M. 166, 646 P.2d 1230 (1982).

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., 98 N.M. 166, 646 P.2d 1230 (1982).

"Property". - The word "property," as that term is used in this section and in 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., 104 N.M. 47, 716 P.2d 238 (1986).

"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, 106 N.M. 779, 750 P.2d 1105 (1988).

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, 117 N.M. 547, 873 P.2d 979 (1994).

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., 104 N.M. 744, 726 P.2d 1374 (1986).

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, 120 N.M. 662, 905 P.2d 202 (Ct. App. 1995).

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., 98 N.M. 166, 646 P.2d 1230 (1982).

Where an insurance company charges a separate full uninsured motorist premium for each vehicle under a single or several policies, it is only fair that the insured be permitted to stack the coverages for which he has paid. Lopez v. Foundation Reserve Ins. Co., 98 N.M. 166, 646 P.2d 1230 (1982).

An insured is entitled to stack underinsured motorist policies for which separate premiums have been paid. Konnick v. Farmers Ins. Co., 103 N.M. 112, 703 P.2d 889 (1985).

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, 106 N.M. 669, 748 P.2d 512 (1988).

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., 107 N.M. 322, 757 P.2d 792 (1988).

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., 118 N.M. 127, 879 P.2d 759 (1994).

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, 115 N.M. 527, 848 P.2d 527 (1993).

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., 120 N.M. 813, 907 P.2d 994 (1995).

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., 120 N.M. 813, 907 P.2d 994 (1995).

Determination of nexus between uninsured driver's fault and insured's injuries involves consideration of whether there was a sufficient causal nexus between the use of the uninsured vehicle and the resulting harm, whether an act of independent significance broke the causal link and, finally, whether the "use" to which the vehicle was put was a normal use of that vehicle. Britt v. Phoenix Indem. Ins. Co., 120 N.M. 813, 907 P.2d 994 (1995).

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 (2002).

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, N.M. , 63 P.3d 517.

B. AMOUNT.

"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 64-24-105, 1953 Comp. (similar to this section), provided for a minimum, but not a maximum, amount of protection. Recovery of the total amount of the insured's policy was not a windfall where the total damages suffered exceeded the total recovery. Sloan v. Dairyland Ins. Co., 86 N.M. 65, 519 P.2d 301 (1974).

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. American Mut. Ins. Co. v. Romero, 428 F.2d 870 (10th Cir. 1970).

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. American Mut. Ins. Co. v. Romero, 428 F.2d 870 (10th Cir. 1970).

If insurer seeks to directly reduce amount of its minimum statutory coverage by a reduction in such coverage to the exact amount that the insured may have received from other sources, this is not permitted under 64-24-105, 1953 Comp. (similar to this section), and cannot be justified by the existence of or application of the doctrine of proration. American 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, 106 N.M. 603, 747 P.2d 249 (1987).

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., 103 N.M. 216, 704 P.2d 1092 (1985); Martinez v. Allstate Ins. Co., 1997-NMCA-100, 124 N.M. 36, 946 P.2d 240.

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., 108 N.M. 807, 780 P.2d 633 (1989).

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, 110 N.M. 188, 793 P.2d 1341 (1990).

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).

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., 119 N.M. 467, 892 P.2d 600 (1995).

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. This distinction is not enough to warrant a repeal by implication and does not make the acts irreconcilable. Stinbrink v. Farmers Ins. Co., 111 N.M. 179, 803 P.2d 664 (1990).

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., 111 N.M. 179, 803 P.2d 664 (1990).

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 [of] review 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 repeals 66-5-303 NMSA 1978, as enacted by Laws 1969, ch. 18, § 4, and enacts the above section, effective June 20, 2003. For provisions of the former section, see the 2001 Replacement Pamphlet.

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.

Any person who does not have a valid New Mexico driver's license may be issued an identification card by the department certified by the applicant as to true name, correct age and other identifying data as the department may require. 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.

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.

ANNOTATIONS

The 1989 amendment, effective July 1, 1989, added the last sentence.

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".

66-5-402. Persons eligible for identification cards.

The department shall issue an identification card only to:

A. a person who is a New Mexico resident and who does not have a valid New Mexico driver's license and only upon the furnishing of a birth certificate or its certified copy, a certificate of baptism, a valid passport or other evidence that the department deems sufficient as documentary evidence of the age and identity of the person; or

B. a person over age sixty-five who is a New Mexico resident and who is surrendering a valid New Mexico driver's license, which license shall be sufficient documentary evidence of the age and identity of the person.

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.

ANNOTATIONS

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.

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.

66-5-403. Expiration of identification cards; duration.

A. Except as provided in Subsection B of this section, every identification card shall be issued for a period not to exceed four years and shall expire on the last day of the

month of the identified person's birth in the fourth year after the effective date of the identification card. The identification card may be renewed within ninety days prior to its expiration.

B. 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 on the last day of the month of the applicant's birth in the eighth year after the effective date of the identification card. The identification card may be renewed within ninety days prior to its expiration.

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.

ANNOTATIONS

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.

The identification card shall adequately describe the registrant and bear his picture which shall show a full face or front view for all registrants. All identification cards of persons under the age of twenty-one shall have a printed legend indicating that the person is under twenty-one. The identification card shall bear the following 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".

History: 1953 Comp., § 64-5-405, enacted by Laws 1978, ch. 35, § 332; 1987, ch. 10, § 2.

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. It was not enacted by the legislature, 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.

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.

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.

ANNOTATIONS

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

For the general fund, see 6-4-2 NMSA 1978.

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.

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.

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;

(5) use a false or fictitious name 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

(6) make or permit any unlawful use of the identification card issued to the person.

B. 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.

PART 6
IGNITION INTERLOCK LICENSES

66-5-501. Short title.

Sections 1 through 4 [66-5-501 to 66-5-504 NMSA 1978] of this act 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. As to the interlock driving fund, see 66-8-102.3.

Emergency clauses. - Laws 2003, ch. 239, § 11 makes this section effective immediately. Approved April 6, 2003.

66-5-502. Definitions.

As used in the Ignition Interlock Licensing Act [Chapter 66, Article 5, Part 6 NMSA 1978]:

A. "denied" means having an instructor's permit, driver's license or provisional license denied for driving while under the influence of intoxicating liquor or drugs, pursuant to the provisions of Subsection D of Section 66-5-5 NMSA 1978;

B. "ignition interlock device" means a regularly calibrated device, approved by the traffic safety bureau, 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 operates the vehicle;

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 instructor's permit, driver's license or provisional 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 having an instructor's permit, driver's license or provisional license revoked for driving while under the influence of intoxicating liquor or drugs, pursuant to the provisions of Sections [Section] 66-8-102 or 66-8-111 NMSA 1978.

History: Laws 2003, ch. 239, § 2.

ANNOTATIONS

Bracketed material. - The bracketed material in Subsection D was inserted by the compiler. It was not enacted by the legislature and is not part of the law.

Emergency clauses. - Laws 2003, ch. 239, § 11 makes this section effective immediately. Approved April 6, 2003.

66-5-503. Ignition interlock license; requirements; exclusions.

A. A person whose instructor's permit, driver's license or provisional license has been revoked or denied 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; and

(b) 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 injury 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.

History: Laws 2003, ch. 239, § 3.

ANNOTATIONS

Emergency clauses. - Laws 2003, ch. 239, § 11 makes this section effective immediately. Approved April 6, 2003.

66-5-504. Penalties.

A person who is issued an ignition interlock license and operates a vehicle that is not equipped with an ignition interlock device in violation of the Ignition Interlock Licensing Act [Chapter 66, Article 5, Part 6 NMSA 1978] shall be subject to the penalties provided in Section 66-5-39 NMSA 1978.

History: Laws 2003, ch. 239, § 4.

ANNOTATIONS

Emergency clauses. - Laws 2003, ch. 239, § 11 makes this section effective immediately. Approved April 6, 2003.

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, eleven dollars ($11.00); and

(2) for a motorcycle having three wheels in contact with the ground or having a sidecar, eleven dollars ($11.00).

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.

ANNOTATIONS

Cross references. - For the definition of "motorcycle," see 66-1-4.11 NMSA 1978.

For registration generally, see 66-3-1 to 66-3-27 NMSA 1978.

For creation of motorcycle training fund, see 66-10-10 NMSA 1978.

1994 amendments. - Identical amendments to this section were enacted by Laws 1994, ch. 117, § 18 and ch. 126, § 18, both effective immediately and both approved March 8, 1994, which 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. The section is set out as amended by Laws 1994, ch. 126, § 18. See 12-1-8 NMSA 1978.

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 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 2003 amendment, effective July 1, 2003 substituted "one dollar ($1.00)" for "fifty cents ($.50)" near the middle of Subsection B.

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. The commissioner (now director) 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. 1959-60 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 dollars ($20.00); 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 sixteen dollars ($16.00);

B. for a vehicle whose gross factory shipping weight is more than two thousand but not more than three thousand pounds, twenty-nine dollars ($29.00); 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-three dollars ($23.00);

C. for a vehicle whose gross factory shipping weight is more than three thousand pounds, forty-two dollars ($42.00); 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-four dollars ($34.00); 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.

ANNOTATIONS

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

1994 amendments. - Identical amendments to this section were enacted by Laws 1994, ch. 117, § 19 and ch. 126, § 19, both effective immediately and both approved March 8, 1994, which added Subsection D. The section is set out as amended by Laws 1994, ch. 126, § 19. See 12-1-8 NMSA 1978.

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 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.

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 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.

License tax or fee on automobiles as affected by interstate commerce clause, 52 A.L.R. 533, 115 A.L.R. 1105.

Validity of automobile registration or license fee as affected by classification or discrimination, 126 A.L.R. 1419.

60 C.J.S. Motor Vehicles §§ 136(1) to 145.

66-6-3. Trailers; registration fees.

A. For the registration of freight trailers and utility trailers, the following fees shall be collected:

(1) for the permanent registration or reregistration of freight trailers, ten dollars ($10.00);

(2) for the annual registration of each utility trailer not permanently registered, five dollars ($5.00) plus one dollar ($1.00) for each one hundred pounds or major fraction thereof of actual empty weight over five hundred pounds actual empty weight; except that in the case of travel trailers, actual empty weight shall be one-half of the gross factory shipping weight or, if gross factory shipping weight is not available, then actual empty weight shall be one-half of actual gross vehicle weight; and

(3) for the permanent registration of utility trailers not used in commerce that have a gross vehicle weight of less than six thousand one pounds, twenty-five dollars ($25.00) plus five dollars ($5.00) for each one hundred pounds or major fraction thereof of actual empty weight over five hundred pounds actual empty weight; except that in the case of travel trailers, actual empty weight shall be one-half of the gross factory shipping weight or, if gross factory shipping weight is not available, then actual empty weight shall be one-half of actual gross vehicle weight and for the reregistration of such utility trailers upon their sale or transfer, five dollars ($5.00).

B. At the option of the owner of a fleet of fifty or more utility trailers wishing to register them in New Mexico, the motor vehicle 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 motor vehicle 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.

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 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	$ 30
4,001 to 6,000	41
6,001 to 8,000	52
8,001 to 10,000	63
10,001 to 12,000	74
12,001 to 14,000	85
14,001 to 16,000	96
16,001 to 18,000	107
18,001 to 20,000	118
20,001 to 22,000	129
22,001 to 24,000	140
24,001 to 26,000	151
26,001 to 48,000	88.50
48,001 and over	129.50.

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 combination gross 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 any 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, there is imposed at the time of registration an annual tire recycling fee of one dollar fifty cents ($1.50) 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. Four 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 tire recycling fund pursuant to the provisions of Section 66-6-23 NMSA 1978.

I. Five percent of registration fees of trucks in excess of forty-eight thousand pounds declared gross vehicle weight is to be transferred to the tire recycling 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.

ANNOTATIONS

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

1994 amendments. - Identical amendments to this section were enacted by Laws 1994, ch. 117, § 20 and ch. 126, § 20, both effective immediately and both approved March 8, 1994, which, 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. The section is set out as amended by Laws 1994, ch. 126, § 20. See 12-1-8 NMSA 1978.

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.

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 five dollars ($5.00). In addition to other registration fees imposed by this section, beginning July 1, 1994, there is imposed at the time of registration an annual tire recycling fee of fifty cents ($.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.

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.

1994 amendments. - Identical amendments to this section were enacted by Laws 1994, ch. 117, § 21 and ch. 126, § 21, both effective immediately and both approved March 8, 1994, which added the second sentence. The section is set out as amended by Laws 1994, ch. 126, § 21. See 12-1-8 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.

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.

History: 1978 Comp., § 66-6-6.1, enacted by Laws 2001, ch. 282, § 1.

ANNOTATIONS

Effective dates. - Laws 2001, ch. 282, § 3 make the act effective July 1, 2001.

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: 1978 Comp., § 66-6-6.2, enacted by Laws 2002, ch. 16, § 1.

ANNOTATIONS

Emergency clauses. - Laws 2002, ch. 16, § 5 makes the act effective immediately. Approved March 4, 2002.

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 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 twenty-five dollars ($25.00).

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 under 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.

ANNOTATIONS

1994 amendments. - Identical amendments to this section were enacted by Laws 1994, ch. 117, § 22 and ch. 126, § 22, both effective immediately and both approved March 8, 1994, which added Subsection B and redesignated former Subsection B as Subsection C. The section is set out as amended by Laws 1994, ch. 126, § 22. See 12-1-8 NMSA 1978.

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.

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 five dollars ($5.00) 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 such 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.

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 five dollars ($5.00).

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 his 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 regulations promulgated by the property tax division under 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 his manufactured home and pays the fee required by this section, he shall be notified in writing by the division that the information required by Subsection B 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 [Articles 35 to 38 of Chapter 7 NMSA 1978].

History: 1953 Comp., § 64-6-10, enacted by Laws 1978, ch. 35, § 345; 1983, ch. 295, § 30.

ANNOTATIONS

Cross references. - For definition of "manufactured home," see 66-1-4.11 NMSA 1978.

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. 1959-60 Op. Att'y Gen. No. 59-53.

66-6-11. Computation of weight.

The weight for determining registration fees shall be as follows:

A. for trucks, truck tractors, road tractors and buses, the declared gross weight;

B. for freight trailers, irrespective of their weight, a flat fee for permanent registration shall be charged as provided by law;

C. for utility trailers, the actual empty weight, except that in the case of travel trailers the weights to be used are those specified in Section 66-6-3 NMSA 1978; and

D. for all other vehicles, except as otherwise provided by law, the gross factory shipping weight.

History: 1953 Comp., § 64-6-11, enacted by Laws 1978, ch. 35, § 346.

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 § 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 five dollars ($5.00) a year.

B. The application for registration of a school bus shall be accompanied by the certificate of the director of transportation of the state department of public education stating that the vehicle is used solely and exclusively as a school bus. No passenger car shall be considered as a school bus for the purposes of this section.

History: 1953 Comp., § 64-6-12, enacted by Laws 1978, ch. 35, § 347.

ANNOTATIONS

Cross references. - For the definition of "school bus," see 66-1-4.2 NMSA 1978.

66-6-13. Reduced fees for portion of year; 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;

(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 such a 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 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.

History: 1953 Comp., § 64-6-13, enacted by Laws 1978, ch. 35, § 348.

ANNOTATIONS

Cross references. - For other temporary permits, see 66-3-6 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. 1955-56 Op. Att'y Gen. No. 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 this state, 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 state department or agency, 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 for.

D. The division shall issue plates for vehicles and trailers in the service of this state, 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 state department or agency, 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.

History: 1953 Comp., § 64-6-15, enacted by Laws 1978, ch. 35, § 350; 2001, ch. 111, § 1.

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 generally, see 66-10-1 NMSA 1978 et seq.

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. Amputees and those who have lost use of limbs exempted.

A. For the purpose of this section "veteran" means a person who is a bona fide resident of New Mexico, who served in the armed forces of the United States between September 16, 1940, and July 1, 1946, or who served in such armed forces after June 1, 1950, 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.

B. A veteran shall be exempt from payment of any motor vehicle registration fees to the state on one vehicle a year owned by said veteran.

History: 1953 Comp., § 64-6-16, enacted by Laws 1978, ch. 35, § 351.

ANNOTATIONS

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. 1963-64 Op. Att'y Gen. No. 63-132.

Residency required at time of application. - The legislature intended a claimant under this section to be a bona fide New Mexico resident, but he need be only at the time he applies for the statutory exemption. 1963-64 Op. Att'y Gen. No. 63-132.

66-6-17. Special dealer plate fees.

A. Except as provided otherwise in Subsection C of this section, every dealer or wrecker of vehicles, except a dealer in motorcycles only, shall pay each license year fifty dollars ($50.00) for each special dealer plate issued pursuant to Section 66-3-402 NMSA 1978 to the dealer or wrecker 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 special dealer plate issued pursuant to Section 66-3-402 NMSA 1978 to the dealer for that license year.

C. In the event any special dealer plate is lost, mutilated or becomes illegible, a dealer, wrecker of vehicles or 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 special dealer plate shall be fifty dollars ($50.00) for a dealer or wrecker of vehicles and 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.

ANNOTATIONS

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.

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.

66-6-18. License fee for dealers, wholesalers, distributors and wreckers of vehicles and title service companies.

For a license to do business as a dealer, wholesaler, distributor or wrecker of vehicles or any combination of the foregoing 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.

ANNOTATIONS

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".

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.

66-6-19. Vehicle transaction fees.

A. For any transaction concerning the 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.

66-6-20. Repealed.

ANNOTATIONS

Repeals. - Laws 1999, ch. 49, § 9 repeals 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 1998 Replacement Pamphlet. For present comparable provisions, see 66-6-23 NMSA 1978.

66-6-21. Repealed.

ANNOTATIONS

Repeals. - Laws 1990, ch. 120, § 44 repeals 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 1989 Replacement Pamphlet.

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. 1959-60 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. 1961-62 Op. Att'y Gen. No. 61-76.

Refunds made from 4% of fees collected. - The refunds referred to in 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. 1959-60 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.

C. Money deposited to the credit of or disbursed from the motor vehicle suspense fund shall be accounted for as provided by law or rule of the secretary of finance and administration. Disbursements from the motor vehicle suspense fund shall be made by

the department of finance and administration upon request and certification of their appropriateness by the secretary of finance and administration or the secretary's delegate.

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.

ANNOTATIONS

The 1999 amendment, effective July 1, 1999, updated statutory references in Subsection B.

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.

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 three dollars ($3.00) per identification card or motor vehicle or motorboat registration or title transaction performed; and

(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;

(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 fifty cents ($.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 Section 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 C 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 J and K 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 pursuant to Paragraph (1) of Subsection E of Section 66-3-419 NMSA 1978, Subsection E of Section 66-3-422 NMSA 1978 and Subsection E of Section 66-3-423 NMSA 1978; and

(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 [Chapter 66, Article 5, Part 3 NMSA 1978] and for creating and maintaining a multilanguage noncommercial driver's license testing program;

(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 state highway and transportation department, 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, two dollars ($2.00) of each motorcycle registration fee collected pursuant to Section 66-6-1 NMSA 1978;

(12) to the tire recycling 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; and

(15) to the litter control and beautification fund, an amount equal to the fees collected pursuant to Section 66-6-6.2 NMSA 1978.

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.

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 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.

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 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 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.

1993 amendments. - Laws 1993, ch. 68, § 43, enacted an amendment to this section, effective July 1, 1993, approved March 19, 1993, which added Paragraph (6) of Subsection A and made a minor stylistic change. Laws 1993, ch. 304, § 1, enacted an amendment to this section, effective July 1, 1993, approved April 8, 1993, which substituted "six dollars ($6.00)" for "five dollars ($5.00)" and "three dollars ($3.00)" for "two dollars ($2.00)" in Paragraph (1) of Subsection A; made a stylistic change in Paragraph (1) of Subsection C; and deleted former Subsection G, which related to an additional payment to municipalities, counties or fee agents whose office exceeded ten thousand aggregate transactions per year. Laws 1993, ch. 361, § 2, enacted an amendment to this section, effective July 1, 1993, approved April 8, 1993, which in Subsection A, substituted "six dollars ($6.00)" for "five dollars ($5.00)" and "three dollars ($3.00)" for "two dollars ($2.00)" in Paragraph (1), inserted "with a population in excess of three hundred thousand" and substituted "three hundred thousand" for "two hundred thousand" in Paragraph (2), added present Subparagraph (b) to Paragraph (5), redesignating former Subparagraph (b) as Subparagraph (c), and added Paragraphs (6) through (8), making related grammatical changes. This section is set out as amended by Laws 1993, ch. 361, § 2. See 12-1-8 NMSA 1978.

1994 amendments. - Identical amendments to this section were enacted by Laws 1994, ch. 117, § 18 and ch. 126, § 18, both effective immediately and both approved

March 8, 1994, which 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. The section is set out as amended by Laws 1994, ch. 126, § 18. See 12-1-8 NMSA 1978.

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 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 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.

200l amendments. - Laws 2001, ch. 282, § 2, effective July 1, 2001, inserting Subparagraph A(3)(a); redesignated the remaining subparagraphs accordingly; and adding Paragraph A(5)(e), was approved April 4, 2001. However, this section was also amended by Laws 2001, ch. 20, § 1, effective March 13, 2001, which would have amended the section to read as follows:

"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 three dollars ($3.00) per identification card or motor vehicle or motorboat registration or title transaction performed; and

"(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 any 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;

"(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 designated as an agent pursuant to Section 66-2-14.1 NMSA 1978, operating a motor vehicle field office, an amount equal to fifty cents ($.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 Section 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 C 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 J and K 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; and

"(d) the amounts due to the department pursuant to Paragraph (1) of Subsection E of Section 66-3-419 NMSA 1978, Subsection E of Section 66-3-422 NMSA 1978 and Subsection E of Section 66-3-423 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 state highway and transportation department, 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, two dollars ($2.00) of each motorcycle registration fee collected pursuant to Section 66-6-1 NMSA 1978;

"(12) to the highway infrastructure fund, all tire recycling fees collected pursuant to the provisions of Sections 66-6-1, 66-6-2, 66-6-4, 66-6-5 and 66-6-8 NMSA 1978;

"(13) 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; and

"(14) to the litter control and beautification fund, an amount equal to the fees collected pursuant to Section 67-16-14 NMSA 1978.

"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 re-designated 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 re-designated paragraph, subsection or section."

Because Laws 2001, ch. 20, was approved earlier on March 13, 2001, this section is set out as amended by Laws 2001, ch. 282, § 2. 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).

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 is set out as amended by Laws 2003, Ch. 270, § 6. See 12-1-8 NMSA 1978.

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. 1959-60 Op. Att'y Gen. No. 59-121.

"Maintenance". - The term "maintenance" in 64-11-12B(2), 1953 Comp. (similar to Subsection A(3) of this section), is not limited to any specific means. 1963-64 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) sixty-six and five hundred forty-one thousandths percent shall be distributed to the state road fund;

(2) ten and thirty-two thousandths 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) ten and thirty-two thousandths percent shall be transferred to the counties, with each county receiving an amount equal to the proportion, determined by the secretary of highway and 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 highway and 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 state highway and transportation department, the boards of county commissioners of the various counties may use or designate any of the funds provided in this paragraph for any federal aid program;

(4) five and three hundred fifty-eight thousandths 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 any county in which there are no incorporated municipalities, the amount allocated pursuant to this paragraph shall be transferred to the county road fund and used in accordance with the provisions of Paragraph (3) of this subsection; and

(5) eight and thirty-seven thousandths 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 any 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 which 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 Subsection B of this section 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 highway and 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 highway and 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 highway and transportation shall be the official

mileage of public roads maintained by each county. Distribution of amounts to any 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 highway and 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.

66-6-24. Repealed.

ANNOTATIONS

Repeals. - Laws 1989, ch. 85, § 1 repeals 66-6-24 NMSA 1978, as amended by Laws 1986, ch. 20, § 124, relating to state road suspense fund, effective June 16, 1989. For provisions of former section, see 1988 Cumulative Supplement.

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, 101 N.M. 59, 678 P.2d 687 (1984), 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, 101 N.M. 59, 678 P.2d 687 (1984), 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 repeals 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 provisions of former section, see 1984 Replacement Pamphlet. 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

Only vehicles with paid registration exempt from personal property tax. - Laws 1929, ch. 119, § 32, relieved from separate assessment and taxation as personal property only those motor vehicles upon which the registration fees had been paid. Oden Buick, Inc. v. Roehl, 36 N.M. 293, 13 P.2d 1093 (1932).

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 64-11-14, 1953 Comp. (similar to this section). Halliburton Co. v. Property Appraisal Dep't, 88 N.M. 476, 542 P.2d 56 (Ct. App. 1975).

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, 88 N.M. 476, 542 P.2d 56 (Ct. App. 1975).

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 (50 U.S.C. App. § 574) 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 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. 1959-60 Op. Att'y Gen. No. 59-53.

Assessor's duty with trailer limited to assessing it as realty. - The duty of a county assessor to place a house trailer on the property tax rolls is limited to assessing it as a part of the realty to which it has become affixed. This authority would exist even without the provisions of 64-11-14, 1953 Comp. (similar to this section), although it provides a useful guide. 1959-60 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 repeals 66-6-27 to 66-6-29 NMSA 1978, as amended by Laws 1986, ch. 20, § 126 and Laws 1982, ch. 20, § 1, and as enacted by Laws 1978, ch. 35, § 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. For provisions of former sections, see 1987 Cumulative Supplement and 1984 Replacement Pamphlet.

66-6-30. Recompiled.

ANNOTATIONS

Recompilations. - Laws 1988, ch. 73, § 36, recompiled this section as 7-15A-9 NMSA 1978.

66-6-31 to 66-6-33. Repealed.

ANNOTATIONS

Repeals. - Laws 1988, ch. 73, § 56 repeals 66-6-31 to 66-6-33 NMSA 1978, as enacted by Laws 1978, ch. 35, §§ 366 and 368 and as amended by Laws 1985, ch. 45, § 2,

relating to distribution of revenue from use fee and penalty and lien for nonpayment of use fee, effective July 1, 1988. For provisions of former sections, see 1984 Replacement Pamphlet and 1987 Cumulative Supplement.

66-6-34. Recompiled.

ANNOTATIONS

Recompilations. - Laws 1995, ch. 135, § 28 recompiles 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 repeals 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 1989 Replacement Pamphlet.

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

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 [Articles 1 to 8 of Chapter 66, except 66-7-102.1 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.

A police vehicle showing red lights or sounding a siren is an emergency vehicle and all approaching or pursued vehicles are required to stop. 1959-60 Op. Att'y Gen. No. 59-20.

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, 55 N.M. 295, 232 P.2d 694 (1951).

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., 65 N.M. 319, 336 P.2d 1070 (1959).

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.

PART 1
APPLICATION OF TRAFFIC LAWS

66-7-1. Repealed.

ANNOTATIONS

Repeals. - Laws 1990, ch. 120, § 45 repeals 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 1989 Cumulative Supplement. 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.

Motorcycle as within statute or ordinance in relation to motorcars, motor-driven cars, etc., 48 A.L.R. 1090, 70 A.L.R. 1253.

Applicability of regulations governing vehicular traffic to driveways or other places not legal highways, 80 A.L.R. 469.

Law of road or traffic regulation as affected by closing of street or highway to general public or restriction of its use to special class of persons, 157 A.L.R. 1164.

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 [Articles 1 to 8 of Chapter 66, except 66-7-102.1 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 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).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 7A Am. Jur. 2d Automobiles and Highway Traffic § 204.

Validity and construction of statutes or ordinances which make noncompliance with motor vehicle regulations a penal offense without regard to intent, fault, or knowledge, 11 A.L.R. 1434.

Violation of statute or ordinance regulating movement of vehicles as affecting violator's right to recover for negligence, 12 A.L.R. 458.

Entrapment to commit traffic offense, 34 A.L.R.4th 1167.

60 C.J.S. Motor Vehicles § 25.

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.

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. 1955-56 Op. Att'y Gen. No. 55-6313.

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, 69 N.M. 132, 364 P.2d 757 (1961).

Provision recognizes fact that maintenance personnel cannot follow road rules. - The legislature incorporated 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 generally binding. Sturgeon v. Clark, 69 N.M. 132, 364 P.2d 757 (1961).

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, 69 N.M. 132, 364 P.2d 757 (1961).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 7A Am. Jur. 2d Automobiles and Highway Traffic § 207.

Responsibility of public officer for negligence of subordinate in operation of vehicles, 3 A.L.R. 149.

Criminal or penal responsibility of public officer or employee for violating speed regulation, 9 A.L.R. 367.

Applicability of state or municipal traffic or vehicle regulations to those engaged in handling United States mail, 18 A.L.R. 1169.

Applicability of motor vehicle regulations to public officials and employees, 19 A.L.R. 459, 23 A.L.R. 418.

Personal liability of public official for injury on highway, 40 A.L.R. 39, 57 A.L.R. 1037.

Use of municipal automobile as a corporate or as a governmental function, 110 A.L.R. 1117, 156 A.L.R. 714.

Inspection of motor vehicles by municipal authorities as pertaining to the governmental or to the proprietary functions of the municipality as regards liability for damage or injury, 133 A.L.R. 1216.

60 C.J.S. Motor Vehicles § 21.

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, 72 N.M. 345, 383 P.2d 823 (1963).

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, 87 N.M. 425, 535 P.2d 68 (Ct. App. 1975).

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 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 64-15-7, 1953 Comp. (similar to this section), specifically authorizes Albuquerque to adopt additional traffic regulations. City of Albuquerque v. Chavez, 91 N.M. 559, 577 P.2d 457 (Ct. App.), cert. denied, 91 N.M. 610, 577 P.2d 1256 (1978) (decided under former law).

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 [66-1-1 NMSA 1978];

(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 1995 amendment, effective July 1, 1995, added Paragraph (13) of Subsection A.

The 2003 amendment, effective July 1, 2003, substituted "transportation commission" for "highway commission" in Subsection B.

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, 58 N.M. 534, 273 P.2d 642 (1954).

A city has the power to regulate parking, even to the extent of prohibiting it in a proper case. Farnsworth v. City of Roswell, 63 N.M. 195, 315 P.2d 839 (1957).

A 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, 63 N.M. 195, 315 P.2d 839 (1957).

Municipalities could provide for higher prima facie speed. - Under former 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, 63 N.M. 274, 317 P.2d 321 (1957).

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, 63 N.M. 195, 315 P.2d 839 (1957).

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.

Conflict between statutes and local regulations as to automobiles, 21 A.L.R. 1186, 64 A.L.R. 993, 147 A.L.R. 522.

Constitutionality of legislative delegation of powers to prescribe or vary regulations concerning motor vehicles used on highways, 87 A.L.R. 546.

Failure of municipality to adopt or enforce traffic regulations as ground of its liability for damage to property or person, 92 A.L.R. 1495, 161 A.L.R. 1404.

Construction and operation of regulations as to sudden stop or slowing of motor vehicle, 29 A.L.R.2d 5.

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, regulation or agreement of the state highway department, the New Mexico state police, in cases of emergency where the condition of a state 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 close such highway to vehicular travel until the New Mexico state police determines otherwise. The state highway department shall be notified of the highway closure as soon as practicable.

History: Laws 1987, ch. 280, § 1.

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 state highway commission [state transportation commission] as it relates to stop signs is to be given prospective effect only. Sellman v. Haddock, 66 N.M. 206, 345 P.2d 416 (1959).

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 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 (1999).

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

The 2003 amendment, effective July 1, 2003, substituted "transportation commission" for "highway commission" in the section heading and the section.

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.

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.

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, 66 N.M. 206, 345 P.2d 416 (1959).

Am. Jur. 2d, A.L.R. and C.J.S. references. - Constitutionality of legislative delegation of powers to prescribe or vary regulations concerning motor vehicles used on highways, 87 A.L.R. 546.

Conflict between statutes and local regulations as to automobiles, 147 A.L.R. 522.

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.

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 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., 95 N.M. 773, 626 P.2d 310 (Ct. App. 1981).

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. It was not enacted by the legislature, and it is not a part of the law.

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 state highway commission [state transportation commission] are concerned, all traffic control devices of whatever nature are subject to the approval of the state highway commission [state transportation commission]. 1953-54 Op. Att'y Gen. No. 53-5837 (decided under former version of this section).

Pedestrian has right-of-way when no signal of traffic-control type. - 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 64-18-33, 1953 Comp. (similar to 66-7-334 NMSA 1978), 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, 78 N.M. 566, 434 P.2d 388 (1967).

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, 55 N.M. 295, 232 P.2d 694 (1951).

66-7-106. Pedestrian-control signals.

Whenever special pedestrian-control signals exhibiting the words "walk" or "don't walk" are in place:

A. "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

B. "don't walk" indicates that no pedestrian shall start to cross the roadway in the direction of the signal, but any pedestrian who has partially completed his crossing on the "walk" signal shall proceed to a sidewalk or safety island while the "don't walk" signal is showing.

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.

ANNOTATIONS

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, then 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 past such signal only with caution.

B. This section shall not apply at railroad grade crossings. Conduct of drivers of vehicles approaching railroad grade cossings [crossings] shall be governed by the rules as set forth in Section 66-7-341 NMSA 1978.

History: 1953 Comp., § 64-7-107, enacted by Laws 1978, ch. 35, § 387.

ANNOTATIONS

Compiler's notes. - This section is similar to 64-16-7, 1953 Comp. Court decisions reached pursuant to the former, similar provisions have been placed under this section.

A 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 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, 78 N.M. 566, 434 P.2d 388 (1967).

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 64-16-17, 1953 Comp. (similar to this section). Butcher v. Safeway Stores, Inc., 78 N.M. 593, 435 P.2d 212 (Ct. App. 1967).

Pedestrian has right-of-way if no signal of traffic-control type. - 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 64-18-33, 1953 Comp. (similar to 66-7-334 NMSA 1978), 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, 78 N.M. 566, 434 P.2d 388 (1967).

66-7-108. Display of unauthorized signs, signals or markings.

A. No person shall place, maintain or display upon or in view of any highway any unauthorized sign, signal, marking or device which purports to be or is an imitation of or resembles an official traffic-control device or railroad sign or signal, or which attempts to direct the movements of traffic, or which hides from view or interferes with the effectiveness of any official traffic-control device or any railroad sign or signal, and no person shall place or maintain nor shall any public authority permit upon any highway any traffic sign or signal bearing thereon any commercial advertising.

B. Every such prohibited sign, signal or marking is hereby declared to be a public nuisance and the authority having jurisdiction over the highway is hereby empowered to remove the same or cause it to be removed without notice.

History: 1953 Comp., § 64-7-108, enacted by Laws 1978, ch. 35, § 388.

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.

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.

1987 amendments. - Laws 1987, ch. 97, § 2, effective April 7, 1987, in Subsection A substituting "66-7-203 NMSA 1978" for "64-7-203 NMSA 1953"; in Subsection B inserting "of Section 66-7-203 NMSA 1978" following "to comply with the requirements" and inserting "notwithstanding the provisions of Section 31-18-13 NMSA 1978"; and making minor changes in language throughout the section, was approved April 7, 1987. However, Laws 1987, ch. 101, § 1 effective June 19, 1987, also amending this section in Subsection A by substituting "66-7-203 NMSA 1978" for "64-7-203 NMSA 1953" at the end of the first sentence and making minor language changes; by rewriting Subsection B; inserting the present Subsection C; and relettering the former Subsection C as the present Subsection D, was approved later April 7, 1987. The section is set out as amended by Laws 1987, ch. 101, § 1. See 12-1-8 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.

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 (2000).

Every legitimate inference will be drawn against a hit-and-run driver. Lopez v. Townsend, 42 N.M. 601, 82 P.2d 921 (1938).

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.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 289 to 295, 363, 382.

Duty and liability to persons struck by automobile while crossing street at usual place, or diagonally, 14 A.L.R. 1176, 67 A.L.R. 313.

Constitutionality, construction and effect of statute in relation to conduct of driver of automobile after happening of an accident, 16 A.L.R. 1425, 66 A.L.R. 1228, 101 A.L.R. 911.

Sufficiency of indictment or information charging failure to stop after accident, give name, or to render assistance, 115 A.L.R. 361.

Failure to stop or other conduct after automobile accident as supporting claim for exemplary damages, 156 A.L.R. 1115.

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.

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.

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.

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

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. - Liability for injury to child by automobile left unattended in street or highway, 140 A.L.R. 538.

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 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.

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.

ANNOTATIONS

Cross references. - For snowmobile accidents and reports, see 66-9-11 NMSA 1978.

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 state highway and transportation department.

B. The state highway and transportation department 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 state highway and transportation department and may require witnesses of accidents to render reports concerning the accidents to the state highway and transportation department.

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 state highway and transportation department.

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.

ANNOTATIONS

The 1989 amendment, effective July 1, 1989, substituted "state highway and transportation department" for "division" throughout the section.

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.

Police officer must forward written report of accident to division. - The driver of a vehicle involved in an accident must report the accident to the department of motor vehicles (now division of motor vehicles) 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. 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 makes the act 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 repeals 66-7-210 NMSA 1978, as amended by Laws 1979, ch. 328, § 1, relating to penalty for failure to report and false reports, effective July 1, 1989. For provisions of former section, see 1987 Replacement Pamphlet.

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.

Compiler's notes. - This section is similar to 64-17-11, 1953 Comp.

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" and "wrecker of vehicles," see 66-1-4.4 and 66-1-4.20 NMSA 1978, respectively.

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 generally, 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. 1953-54 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. 1959-60 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. 1959-60 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) seventy-five miles per hour; and

(4) 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 [state] highway and transportation department, provided that the posted speed limit shall be determined by an engineering study performed by the state highway and transportation department.

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 state highway and transportation department 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 [state] highway and transportation department.

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.

ANNOTATIONS

I. General Consideration.
II. School Zones.
III. Negligence.
A. Due Care.
B. Per Se.
C. Contributory.

I. GENERAL CONSIDERATION.

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.

Bracketed material. - The bracketed material was inserted by the compiler: it was not enacted by the legislature, and it is not part of the law.

The 1989 amendments. - Laws 1989, ch. 318, § 29, effective July 1, 1989, adding new Subsections A(3) and A(4), deleting former Subsections A(3) through A(5); redesignating Subsection A(6) as Subsection A(5); inserting "and transportation" in Subsections A(5) and B(2); deleting Subsection B; and redesignating Subsections C and D as Subsections B and C, was approved on April 7, 1989. However, Laws 1989, ch. 320, § 1, also effective July 1, 1989, rewriting the section to the extent that a detailed comparison would be impracticable, was approved later on April 7, 1989. The section is set out as amended by Laws 1989, ch. 320, § 1. See 12-1-8 NMSA 1978.

The 1996 amendment, 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. Laws 1996, ch. 81 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 15, 1996, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

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).

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, 80 N.M. 564, 458 P.2d 816 (Ct. App.), cert. denied, 80 N.M. 608, 458 P.2d 860 (1969).

"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. 1959-60 Op. Att'y Gen. No. 59-148.

Violation is offense against public health and safety. - A criminal statute, to be valid, must contain sufficiently definite warning as to the proscribed conduct as to permit a person of common understanding to determine what acts he must or must not do. Section 64-18-1.1, 1953 Comp. (similar to this section) meets more than the minimal requirements for definiteness. A violation of 64-18-1.1, 1953 Comp., is an offense against the public health and safety and is therefore a "public offense." 1959-60 Op. Att'y Gen. No. 59-154.

Violation is a misdemeanor. - Since a violation of the speeding laws is a public offense and does not meet the definition of a felony, it is a misdemeanor under the statutory definition contained in 30-1-6 NMSA 1978. 1959-60 Op. Att'y Gen. No. 59-154.

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, 74 N.M. 510, 395 P.2d 233 (1964).

Can prosecute two offenses if one felony and other misdemeanor. - If in a prosecution for reckless driving and failure to use due care arising out of the same facts a conviction of one such offense would be a conviction of a misdemeanor, and a conviction of the other offense would be a conviction of a felony (as where the driver has previously been convicted of reckless driving), there would be no bar to a prosecution for both offenses, even though based on the same facts, since there would not be concurrent jurisdiction. 1964 Op. Att'y Gen. No. 64-147.

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 64-18-1.1, 1953 Comp. (similar to this section) 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. 1957-58 Op. Att'y Gen. No. 57-194.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 218, 317.

Experimental evidence as to speed of motor vehicle, 8 A.L.R. 18, 85 A.L.R. 479.

Criminal or penal responsibility of public officer or employee for violating speed regulation, 9 A.L.R. 367.

Violation of speed law as affecting violator's right to recover for negligence, 12 A.L.R. 463.

Officers or employees of public as bound by speed regulations, 19 A.L.R. 459, 23 A.L.R. 418.

Conflict between statutes and local regulations as to speed, 21 A.L.R. 1186, 64 A.L.R. 993, 147 A.L.R. 522.

Excuse for exceeding speed limit for automobiles, 29 A.L.R. 883.

Driving automobile at a speed which prevents stopping within length of vision as negligence, 44 A.L.R. 1403, 58 A.L.R. 1493, 87 A.L.R. 900, 97 A.L.R. 546.

Excessive speed not proximate cause of automobile accident, but which aggravates its consequences, as affecting extent of liability, 66 A.L.R. 1134.

Liability for injury by trailer as affected by speed, 84 A.L.R. 284.

Driving at illegal speed as reckless driving within statute making reckless driving a criminal offense, 86 A.L.R. 1281, 52 A.L.R.2d 1337.

Delegation of legislative power to regulate speed, 87 A.L.R. 554.

Homicide or assault in connection with operation of automobile at unlawful speed, 99 A.L.R. 756.

Indictment or information which charges offense as to speed in language of statute, 115 A.L.R. 357.

"Assured clear distance" statute or rule as applied at hill or curve, 133 A.L.R. 967.

Expert opinion evidence of speed not based upon view of vehicle, 156 A.L.R. 382.

Custom or practice of motor vehicles as affecting question of negligence as regards speed, 172 A.L.R. 1141, 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.

II. SCHOOL ZONES.

Provision applies to children under 18 years old. - Section 64-18-1.1, 1953 Comp. (similar to this section), 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, 90 N.M. 148, 560 P.2d 939 (Ct. App.), cert. denied, 90 N.M. 255, 561 P.2d 1348 (1977).

Posting of school zone sign is condition precedent to establishment of a school zone. Weiland v. Vigil, 90 N.M. 148, 560 P.2d 939 (Ct. App.), cert. denied, 90 N.M. 255, 561 P.2d 1348 (1977).

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. 1955-56 Op. Att'y Gen. No. 55-6297.

III. NEGLIGENCE.

A. DUE CARE.

Due care necessity 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, 50 N.M. 96, 171 P.2d 316 (1946).

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, 50 N.M. 96, 171 P.2d 316 (1946).

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 64-18-1.1, 1953 Comp. (similar to this section). Butcher v. Safeway Stores, Inc., 78 N.M. 593, 435 P.2d 212 (Ct. App. 1967).

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, 50 N.M. 96, 171 P.2d 316 (1946).

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.

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, 70 N.M. 73, 370 P.2d 799 (1962).

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, 44 N.M. 249, 101 P.2d 382 (1940); Lopez v. Townsend, 42 N.M. 601, 82 P.2d 921 (1938).

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, 83 N.M. 23, 487 P.2d 1093 (Ct. App.), cert. denied, 83 N.M. 22, 487 P.2d 1092 (1971).

"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, 70 N.M. 73, 370 P.2d 799 (1962).

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 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.

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., 49 N.M. 157, 159 P.2d 317 (1945).

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, 98 N.M. 414, 649 P.2d 482 (Ct. App. 1982).

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 a statute is negligent as a matter of law, unless excused from such violation. Dahl v. Turner, 80 N.M. 564, 458 P.2d 816 (Ct. App.), cert. denied, 80 N.M. 608, 458 P.2d 860 (1969).

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. - Section 66-7-307B NMSA 1978 indicates that in cases concerned with posted speed limits plaintiff must still meet his traditional burden of proof. It says that a case involving posted speed limits is not a special category just because posted speed limits are involved. Even if posted speed limits are involved, plaintiff must still prove negligence as a proximate cause of the accident. Section 66-7-307B NMSA 1978, however, does not state how negligence is to be proved. Proof of violation of a statute is one method of proving negligence. Dahl v. Turner, 80 N.M. 564, 458 P.2d 816 (Ct. App.), cert. denied, 80 N.M. 608, 458 P.2d 860 (1969).

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, 80 N.M. 564, 458 P.2d 816 (Ct. App.), cert. denied, 80 N.M. 608, 458 P.2d 860 (1969).

Excessive speed not inferable from mere fact accident happened. - The mere fact that the law requires that vehicles may only be operated at such speed as shall be consistent at all times with safety and the proper use of the roads did not compel the giving of instruction on excessive speed. There is no evidence that either defendant was violating the maximum speed limit and there is no evidence that either was driving at a speed inconsistent with the exercise of due care and the proper use of the highway. Excessive speed under the prevailing conditions is not inferable from the mere fact that

the accidents happened. Lopez v. Maes, 81 N.M. 693, 472 P.2d 658 (Ct. App.), cert. denied, 81 N.M. 721, 472 P.2d 984 (1970).

Instruction of excessive speed not given when no evidence thereof. - Where there was no evidence received in the trial of the case indicating speed in excess of the lawful limit, or speed indicative of lack of due care under the circumstances and as the evidence established that the defendant's vehicle was engaged in, or had just completed, a left turn and was moving very slowly, the jury would logically conclude that the force of this instruction was directed at the speed of the plaintiff and since there was no evidence of excessive speed given by any witness, the issue thus raised by the instruction was not only false, but it was prejudicial. Embrey v. Galentin, 76 N.M. 719, 418 P.2d 62 (1966).

C. CONTRIBUTORY.

Contributory negligence possibly denied if speed limit violation is factor. - Where defendant's negligent act is committed under extremely aggravated circumstances in the establishment of which violation of the statutory speed limit is a factor, contributory negligence may be denied as a defense. Gray v. Esslinger, 46 N.M. 421, 130 P.2d 24 (1942).

Must show limit violation not contributing cause of injury. - Where defendant in action for death of driver of truck interposed defense of contributory negligence, if driver was exceeding statutory speed limit, plaintiff would have been required to show that such speed was not the contributing cause of the injury. H.W. Bass Drilling Co. v. Ray, 101 F.2d 316 (10th Cir. 1939).

66-7-302. Repealed.

ANNOTATIONS

Repeals. - Laws 1989, ch. 318, § 37 and Laws 1989, ch. 319, § 15 repeal 66-7-302 NMSA 1978, as amended by Laws 1987, ch. 73, § 1, relating to maximum speed limit, effective July 1, 1989. For provisions of former section, see 1987 Replacement Pamphlet.

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 under Paragraph (3) or (4) of Subsection A of Section 66-7-301 NMSA 1978 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 under Paragraph (3) or (4) of Subsection A of Section 66-7-301 NMSA 1978 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 nor shall the insurer 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. 319, § 8; 1991, ch. 55, § 1.

ANNOTATIONS

The 1991 amendment, effective June 14, 1991, substituted "seventy-five miles per hour" for "seventy miles per hour" in Subsections A and B.

Compiler's notes. - Laws 1989, ch. 318, § 30 and Laws 1989, ch. 319, § 8 enacted identical versions of this section. The section is treated as enacted by Laws 1989, ch. 319, § 8.

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 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is 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 supreme court law librarian generally, see 18-1-7 NMSA 1978 et seq.

For state highway commissioners, see 67-3-2 NMSA 1978.

For the appointment of the state highway engineer, see 67-3-7 NMSA 1978.

For chief highway administrator, see 67-3-23 NMSA 1978.

The 1996 amendment 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. Laws 1996, ch. 81 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 15, 1996, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

Altered speed becomes speed limit after alteration. - Section 64-18-1.1, 1953 Comp. (similar to 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, 80 N.M. 564, 458 P.2d 816 (Ct. App.), cert. denied, 80 N.M. 608, 458 P.2d 860 (1969).

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.

Am. Jur. 2d, A.L.R. and C.J.S. references. - Conflict between statutes and local regulations as to automobiles, 21 A.L.R. 1186, 64 A.L.R. 993, 147 A.L.R. 522.

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.

Violation is proper question for jury. - Violations of 64-18-4, 1953 Comp. (similar to this section) (driving so slow as to impede traffic), 64-18-49, 1953 Comp. (similar to 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, 83 N.M. 380, 492 P.2d 997 (Ct. App.), cert. denied, 83 N.M. 379, 492 P.2d 996 (1971).

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 [Articles 1 to 8 of Chapter 66, except 66-7-102.1 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

Statutory violation one method of proving negligence. - Subsection B of this section indicates that in cases concerned with posted speed limits plaintiff must still meet his traditional burden of proof. It says that a case involving posted speed limits is not a special category just because posted speed limits are involved. Even if posted speed limits are involved, plaintiff must still prove negligence as a proximate cause of the accident. Subsection B of this section, however, does not state how negligence is to be proved. Proof of violation of a statute is one method of proving negligence. Dahl v. Turner, 80 N.M. 564, 458 P.2d 816 (Ct. App.), cert. denied, 80 N.M. 608, 458 P.2d 860 (1969).

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, 74 N.M. 510, 395 P.2d 233 (1964).

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. - Although the legislature did not explicitly state whom it sought to protect in 64-18-8, 1953 Comp. (similar to this section) and 64-18-16, 1953 Comp. (similar to 66-7-317 NMSA 1978), it is reasonable to assume that it was the motoring public in general, including passengers and that the harm sought to be prevented was head-on collisions or sideswiping the opposite moving traffic; since 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, 88 N.M. 527, 543 P.2d 820 (1975).

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, 46 N.M. 241, 126 P.2d 471 (1942).

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, 42 N.M. 514, 82 P.2d 282 (1938).

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, 58 N.M. 205, 269 P.2d 751 (1954).

Violation not proximate cause of injury as matter of law. - A violation of 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, and the trial court was correct in leaving the issue of causation to the jury in an action for damages for personal injuries sustained by plaintiff when run over by defendant. Martin v. Gomez, 69 N.M. 1, 363 P.2d 365 (1961).

Violation negligence as matter of law unless justified. - Where there are facts showing a violation of 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, 81 N.M. 759, 473 P.2d 373 (Ct. App. 1970).

Negligence even if speeding not proximate cause. - Where it was not the speed of plaintiff's car that was the proximate cause of the accident, but the position of the defendant's car on that side of the road where it did not belong and where there was no danger at all, regardless of the speed of plaintiff's car, until the defendant suddenly turned to the left-hand side of the road, it was not error to refuse to find the plaintiff guilty of contributory negligence. McDonald v. Linick, 58 N.M. 65, 265 P.2d 676 (1954).

Burden on driver on wrong side to explain presence there. - Where it was shown that defendant's car was on the wrong side of the road at the instant of the collision, the burden was on defendant to explain his presence there. Pavlos v. Albuquerque Nat'l Bank, 82 N.M. 759, 487 P.2d 187 (Ct. App. 1971); Paddock v. Schuelke, 81 N.M. 759, 473 P.2d 373 (Ct. App. 1970).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 7A Am. Jur. 2d Automobiles and Highway Traffic § 260.

Right or duty to turn in violation of law of road to avoid traveler or obstacle, 24 A.L.R. 1304, 63 A.L.R. 277, 113 A.L.R. 1328.

Validity of regulations as to part of street to be used by moving vehicles, 29 A.L.R. 1348.

Responsibility for collision at night of automobiles, one of which, with lights on, is moving on wrong side of road, 59 A.L.R. 590.

Speed of automobile as proximate cause of accident where it or colliding vehicle is on wrong side of road, 77 A.L.R. 598.

Liability for injury by trailer, as affected by noncompliance with rules of road, 84 A.L.R. 286.

Sufficiency of indictment or information charging failure to keep on proper side of road or in proper place, 115 A.L.R. 361.

Keeping to right on street or highway divided by parkway or other neutral strip, 165 A.L.R. 1418.

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.

Reciprocal duties of drivers of automobiles or other vehicles proceeding in same direction, 24 A.L.R. 507, 47 A.L.R. 703, 62 A.L.R. 970, 104 A.L.R. 485.

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., 62 N.M. 239, 308 P.2d 213 (1957).

Passing on right within flashing yellow intersection is negligence question for jury. Butcher v. Safeway Stores, Inc., 78 N.M. 593, 435 P.2d 212 (Ct. App. 1967).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 7A Am. Jur. 2d Automobiles and Highway Traffic § 265.

Right-of-way at street or highway intersections, 21 A.L.R. 974, 37 A.L.R. 493, 47 A.L.R. 595, 89 A.L.R. 838, 136 A.L.R. 1497.

Cutting corners as negligence, 115 A.L.R. 1178.

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. - Duty in operating automobile at curve or on hill, 57 A.L.R. 589.

Reciprocal duties of drivers of automobiles or other vehicles proceeding in the same direction, 104 A.L.R. 485.

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).

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).

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, 67 N.M. 350, 355 P.2d 284 (1960).

Custom and usage right-of-way evidence admitted for private road accidents. Irwin v. Graham, 62 N.M. 72, 304 P.2d 875 (1956).

Am. Jur. 2d, A.L.R. and C.J.S. references. - Right or duty to turn in violation of law of road to avoid traveler or obstacle, 24 A.L.R. 1304, 63 A.L.R. 277, 113 A.L.R. 1328.

Responsibility for collision at night of automobiles, one of which, with lights on, is standing or moving on wrong side of road, 59 A.L.R. 590.

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 to be furnished.

A. When, in the judgment of the motor transportation division 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.

B. The chief of the New Mexico state police, upon request from the proper authority, shall furnish a special police car escort to safeguard traffic during the movement of the hazardous vehicle. There shall be paid by the applicant, to move such vehicle, the sum of three hundred dollars ($300) for each police car for each day police escort is required. All sums so paid are appropriated to the New Mexico state police division.

History: 1953 Comp., § 64-7-314, enacted by Laws 1978, ch. 35, § 418; 1988, ch. 14, § 7.

ANNOTATIONS

Cross references. - For movement of vehicles or loads of excessive size and weight, see 66-7-413 NMSA 1978.

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 motor transportation department (now motor transportation division of the transportation department) 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.

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, or as 64-18-14, 1953 Comp. (similar to this section) puts it, the marking is "clearly visible to an ordinarily observant person," 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. 1955-56 Op. Att'y Gen. No. 6297.

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 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, 63 N.M. 447, 321 P.2d 631 (1958).

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 64-22-1 to 64-22-3, 1953 Comp. (similar to 66-8-101 and 66-8-113 NMSA 1978, respectively). State v. Villa, 85 N.M. 537, 514 P.2d 56 (Ct. App. 1973).

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).

No-passing zone regulations effective without filing where defendant admitted understanding. - Rules and regulations of state highway department regarding no-passing zones were effective although not filed with supreme court library as required by former 4-10-13 1953 Comp. et seq., where defendant admitted that he understood the significance of yellow barrier lines and that they designated no-passing zones. Maestas v. Christmas, 63 N.M. 447, 321 P.2d 631 (1958).

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

Cross references. - For the penalty assessment for violation, see 66-8-116 NMSA 1978.

Provision does not apply to one-car accident. - Although the legislature did not explicitly state whom it sought to protect in 64-18-8, 1953 Comp. (similar to 66-7-307 NMSA 1978) and 64-18-16, 1953 Comp. (similar to this section), it is reasonable to assume that it was the motoring public in general, including passengers and that the harm sought to be prevented was head-on collisions or sideswiping the opposite moving traffic; since 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, 88 N.M. 527, 543 P.2d 820 (1975).

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, 83 N.M. 285, 491 P.2d 173 (Ct. App. 1971).

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, 83 N.M. 285, 491 P.2d 173 (Ct. App. 1971).

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, 83 N.M. 285, 491 P.2d 173 (Ct. App. 1971).

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 such 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 by 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 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.

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.

ANNOTATIONS

Cross references. - For the definitions of "business district" and "residence district," see 66-1-4.2 and 66-1-4.15 NMSA 1978.

For the penalty assessment for violation, see 66-8-116 NMSA 1978.

Plaintiff's principal duty under Subsection A was to keep lookout ahead and this she fulfilled when she did not collide with garbage truck in front of her even though it made an unexpected stop. Thus, where plaintiff was struck from behind by defendant's automobile, there was no evidence that plaintiff was guilty of negligence proximately contributing to the accident and the trial court erred in not granting her motion for a directed verdict on this issue of contributory negligence. Kight v. Butscher, 90 N.M. 386, 564 P.2d 189 (Ct. App.), cert. denied, 90 N.M. 636, 567 P.2d 485 (1977).

Left lane vehicle 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).

Violation is proper question for jury. - Violations of 64-18-4, 1953 Comp. (similar to 66-7-305 NMSA 1978) (driving so slow as to impede traffic), 64-18-49, 1953 Comp. (similar to 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, 83 N.M. 380, 492 P.2d 997 (Ct. App.), cert. denied, 83 N.M. 379, 492 P.2d 996 (1971).

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, 81 N.M. 723, 472 P.2d 986 (Ct. App. 1970).

Where the 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, the action constituted was reversed. Lozoya v. Sanchez, 2003-NMSC-009, N.M. , 66 P.3d 948.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 7A Am. Jur. 2d Automobiles and Highway Traffic § 261.

Reciprocal duties of drivers of automobiles or other vehicles proceeding in the same direction, 104 A.L.R. 485.

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., 78 N.M. 593, 435 P.2d 212 (Ct. App. 1967).

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 is a far cry from a pedestrian suddenly appearing in the path of a car. The court was unable to follow 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, 68 N.M. 421, 362 P.2d 798 (1961).

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, 79 N.M. 520, 445 P.2d 585 (1968).

"Working on highway" exemption strictly construed. - The provisions of 64-15-4, 1953 Comp. (similar to 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, 69 N.M. 132, 364 P.2d 757 (1961).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 7A Am. Jur. 2d Automobiles and Highway Traffic § 260.

Automobile accidents on street or highway divided by parkway or other neutral strip, 165 A.L.R. 1418.

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.

For provision that snowmobiles are not to be operated on limited access highways, see 66-9-9 NMSA 1978.

The 2003 amendment, effective July 1, 2003, substituted "transportation commission" for "highway commission".

Section proper exercise of police power and proper delegation thereof. - The legislature's enactment of this section was a proper exercise of the state's police power and further was a proper delegation thereof. It certainly cannot be controverted that the regulation of animals on public highways is necessary to promote the public safety especially in this day of heavy automobile traffic and high highway traffic death tolls. 1959-60 Op. Att'y Gen. No. 60-226.

Highway commission (now transportation commission) has power to prohibit ridden or herded animals on controlled-access highways by a duly passed resolution. 1959-60 Op. Att'y Gen. No. 60-226.

Commission may also prevent passing across or through right-of-way. - The state highway commission [state transportation 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. 1959-60 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.

Subsection D was not intended to avoid 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, 90 N.M. 386, 564 P.2d 189 (Ct. App.), cert. denied, 90 N.M. 636, 567 P.2d 485 (1977).

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, 41 N.M. 346, 68 P.2d 921 (1937).

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., 62 N.M. 239, 308 P.2d 213 (1957).

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, 63 N.M. 274, 317 P.2d 321 (1957).

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, 41 N.M. 346, 68 P.2d 921 (1937).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 256, 257, 259.

Cutting corners as negligence, 6 A.L.R. 321, 115 A.L.R. 1178.

Violation of statute or ordinance regulating movement of vehicles as affecting violator's right to recover for negligence, 12 A.L.R. 458.

Drivers of automobiles or other vehicles proceeding in same direction, reciprocal duties of, with respect to turning at intersections, 24 A.L.R. 513, 47 A.L.R. 703, 62 A.L.R. 970, 104 A.L.R. 485.

Custom or practice of drivers of motor vehicles as affecting question of negligence as regards right-of-way at intersections, 172 A.L.R. 1141, 77 A.L.R.2d 1327.

Right-of-way as between vehicles as affected by relative distances or time of reaching intersection, 175 A.L.R. 1013.

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

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.

Duty in operating automobile at or on curve or hill, 57 A.L.R. 589.

Gross negligence, recklessness or the like, within "guest" statute or rule, predicated upon manner of operating car on curve or hill, 136 A.L.R. 1270.

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 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.

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.

Reasonable compliance with provision makes driver free from contributory negligence. - 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 64-18-24 and 64-18-30, 1953 Comp. (similar to this section and 66-7-331 NMSA 1978, respectively) and is therefore free from contributory negligence. International Serv. Ins. v. Ortiz, 75 N.M. 404, 405 P.2d 408 (1965).

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, 68 N.M. 191, 360 P.2d 383 (1961).

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, 63 N.M. 407, 320 P.2d 1016 (1958).

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 Bldrs., Inc., 70 N.M. 407, 374 P.2d 289 (1962).

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, 63 N.M. 274, 317 P.2d 321 (1957).

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, 68 N.M. 191, 360 P.2d 383 (1961).

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, 69 N.M. 24, 363 P.2d 632 (1961).

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 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, 88 N.M. 170, 538 P.2d 1192 (Ct. App. 1975).

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.

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. 1953-54 Op. Att'y Gen. No. 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. 1953-54 Op. Att'y Gen. No. 5875.

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 Bldrs., Inc., 70 N.M. 407, 374 P.2d 289 (1962).

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 proximately contributing factor in bringing about the accident. Williams v. Haas, 52 N.M. 9, 189 P.2d 632 (1948).

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, 68 N.M. 191, 360 P.2d 383 (1961).

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, 55 N.M. 357, 233 P.2d 1044 (1951).

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, 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, 65 N.M. 267, 335 P.2d 1065 (1959).

Negligence per se not to yield to him. - 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., 64 N.M. 319, 328 P.2d 389 (1958).

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, 76 N.M. 531, 417 P.2d 29 (1966).

Right-of-way provision inapplicable if only one driver applies brakes. - Subsection B of 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. Brizal v. Vigil, 65 N.M. 267, 335 P.2d 1065 (1959).

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, 51 N.M. 5, 177 P.2d 168 (1947).

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, 51 N.M. 5, 177 P.2d 168 (1947).

Due care must be exercised even if have 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, 50 N.M. 96, 171 P.2d 316 (1946).

Due care if at an 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, 53 N.M. 1, 200 P.2d 1021 (1948).

Failing to see other car not necessarily contributory negligence. - 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 contributory negligence, even though he did not see defendant's automobile when, before entering the intersection, he looked in his direction. Schoen v. Schroeder, 53 N.M. 1, 200 P.2d 1021 (1948).

Even if defendant had right-of-way, plaintiff's failure to yield right-of-way did not constitute such contributory 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, 53 N.M. 5, 201 P.2d 341 (1948).

Causal relationship between negligence and injury must be shown. - Even if it is granted that driver was negligent in entering intersection without stopping or signaling as required by former statute, a causal relationship between it and the injury must be shown. Williams v. Haas, 52 N.M. 9, 189 P.2d 632 (1948).

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, 50 N.M. 96, 171 P.2d 316 (1946).

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, 73 N.M. 256, 387 P.2d 458 (1963).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 7A Am. Jur. 2d Automobiles and Highway Traffic, §§ 236, 237.

Right-of-way at street or highway intersections, 21 A.L.R. 974, 37 A.L.R. 493, 47 A.L.R. 595, 136 A.L.R. 1497.

Automobile crossing street at a point other than a street intersection, 57 A.L.R. 1106.

Right-of-way at street or highway intersection as dependent upon, or independent of negligence, 89 A.L.R. 838, 136 A.L.R. 1497.

Right-of-way as between vehicles as affected by relative distances or time of reaching intersection, 175 A.L.R. 1013.

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 [Articles 1 to 8 of Chapter 66, except 66-7-102.1 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, 63 N.M. 274, 317 P.2d 321 (1957).

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 [Articles 1 to 8 of Chapter 66, except 66-7-102.1 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 highway commission [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.

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." Even though not de jure, it was a de facto warning concerning the 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., 81 N.M. 307, 466 P.2d 873 (Ct. App. 1970).

Through street preferred status not lost even if sign missing. - Although a determination of the question was not necessary, court indicated that the better view was that 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, 90 N.M. 638, 567 P.2d 487 (Ct. App.), cert. denied, 91 N.M. 3, 569 P.2d 413 (1977).

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, 51 N.M. 5, 177 P.2d 168 (1947).

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, 51 N.M. 5, 177 P.2d 168 (1947).

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 64-15-6, 1953 Comp. (similar to 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, 72 N.M. 345, 383 P.2d 823 (1963).

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, 62 N.M. 405, 311 P.2d 381 (1957).

Court may occasionally find contributory negligence as matter of law. - Whether the plaintiff has been guilty of contributory negligence barring a recovery is nearly always a question for the jury under proper instructions by the court. It is rarely the case the facts are such that the court can say as a matter of law that plaintiff is himself such an offender against the rules of the road as to deny him recovery. Yet, on occasions it does thus appear and when it does, the court should not and will not hesitate so to declare. Beyer v. Montoya, 75 N.M. 228, 402 P.2d 960 (1965).

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, 84 N.M. 456, 504 P.2d 1089 (Ct. App. 1972), aff'd, 84 N.M. 717, 507 P.2d 778 (1973).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 7A Am. Jur. 2d Automobiles and Highway Traffic § 234.

Emergency rule as applied to automobile drivers in case of accident at street intersections, 27 A.L.R. 1197, 79 A.L.R. 1277, 111 A.L.R. 1019.

Rights and duties at intersection of arterial or other favored highway and nonfavored highway, 58 A.L.R. 1197, 81 A.L.R. 185.

Duty of vehicle driver approaching intersection of one-way street with other street, 62 A.L.R. 275.

Conflict between statutes and local regulations as to duty at street intersections, 64 A.L.R. 993, 147 A.L.R. 522.

What constitutes gross negligence of driver at intersection within statute limiting liability for injury to guest, 86 A.L.R. 1153, 96 A.L.R. 1488.

Custom or practice of drivers of motor vehicles as affecting question of negligence at intersections, 172 A.L.R. 1141, 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.

For the manner in which snowmobiles are to cross streets or highways, see 66-9-9 NMSA 1978.

Not contributorily 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 contributory negligence. International Serv. Ins. v. Ortiz, 75 N.M. 404, 405 P.2d 408 (1965).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 7A Am. Jur. 2d Automobiles and Highway Traffic § 204.

Private crossing or driveway, duty of automobile driver at, 24 A.L.R. 946.

Right-of-way as between vehicles in street or highway and vehicles approaching from private driveway, 50 A.L.R. 283.

Rights and duties at intersection of arterial (or other favored) highway and nonfavored highway, 58 A.L.R. 1197, 81 A.L.R. 185.

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 authorized emergency vehicles.

A. Upon the immediate approach of an authorized emergency vehicle equipped with at least one lighted lamp exhibiting red light visible under normal atmospheric conditions from a distance of five hundred feet to the front of the vehicle when operated as an authorized emergency vehicle and when the driver is giving audible signal by siren, exhaust whistle or bell, 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. This section shall not operate to relieve the driver of an authorized emergency vehicle from the duty to drive 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.

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 2001 amendment, effective June 15, 2001, deleted "other than a police vehicle" preceding "when operated as an authorized emergency vehicle".

Police vehicle showing red lights or sounding siren is emergency vehicle and all approaching or pursued vehicles are required to stop. 1959-60 Op. Att'y Gen. No. 59-20.

Provision does not state driver's standard of care to passengers. - The standard of care provided by 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., 65 N.M. 319, 336 P.2d 1070 (1959).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 7A Am. Jur. 2d Automobiles and Highway Traffic § 244.

Validity of statute or ordinance giving right-of-way in streets or highways to certain classes of vehicles, 38 A.L.R. 24.

Right-of-way of vehicles carrying policemen, 65 A.L.R. 140.

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: 1978 Comp., § 66-7-332.1, enacted by 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.

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, 57 N.M. 383, 259 P.2d 346 (1953).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 245 to 247, 286.

Pedestrian's duty before crossing street, to look for automobiles approaching on intersecting street, 9 A.L.R. 1248, 44 A.L.R. 1299.

Pedestrian's duty as regards looking for automobiles when crossing street or highway, 79 A.L.R. 1073, 145 A.L.R. 536.

Injury to pedestrian on street or highway divided by parkway or other neutral strip, 165 A.L.R. 1418.

Contributory negligence of pedestrian injured by automobile equipped with defective brakes, 170 A.L.R. 639.

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 upon the half of the roadway upon which the vehicle is traveling, or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger.

B. No pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the driver to yield.

C. Subsection A shall not apply under the conditions stated in Section 66-7-335B NMSA 1978.

D. Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching from the rear shall not overtake and pass such stopped vehicle.

History: 1953 Comp., § 64-7-334, enacted by Laws 1978, ch. 35, § 438.

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.

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, 64-18-33, 1953 Comp. (similar to this section) had no application under the set of facts developed at the trial. Pitner v. Loya, 67 N.M. 1, 350 P.2d 230 (1960).

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 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, 78 N.M. 566, 434 P.2d 388 (1967).

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 to look for vehicles approaching on intersecting street, 9 A.L.R. 1248, 44 A.L.R. 1299.

Darting or stepping suddenly into path of car, 65 A.L.R. 192, 113 A.L.R. 528.

Duty to look before crossing street or highway, 79 A.L.R. 1073.

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. Every 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.

History: 1953 Comp., § 64-7-335, enacted by Laws 1978, ch. 35, § 439.

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.

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, 68 N.M. 35, 357 P.2d 1087 (1960).

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, 68 N.M. 35, 357 P.2d 1087 (1960).

Driver has right to assume pedestrian will observe section's dictates. - Instruction was proper which stated that 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, 69 N.M. 443, 367 P.2d 934 (1962).

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, 57 N.M. 383, 259 P.2d 346 (1953).

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, 61 N.M. 387, 301 P.2d 326 (1956).

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, 64 N.M. 153, 326 P.2d 89 (1958).

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, 61 N.M. 387, 301 P.2d 326 (1956).

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, 64 N.M. 153, 326 P.2d 89 (1958).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 7A Am. Jur. 2d Automobiles and Highway Traffic § 286.

Crossing street at unusual place or diagonally, 14 A.L.R. 1176, 67 A.L.R. 313.

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".

The intent was to create common responsibility for children in crosswalks among the municipal and school authorities on streets within the jurisdiction of the municipalities, and the state and school authorities with respect to highways. 1955-56 Op. Att'y Gen. No. 6073.

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. 1955-56 Op. Att'y Gen. No. 6073.

School authorities had responsibility of maintaining crossing. - The responsibility for placing and removing the signs provided for in this section 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. 1955-56 Op. Att'y Gen. No. 6297 (opinion rendered prior to the 1975 amendment which gave the duty to the county or municipality).

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., 114 N.M. 750, 845 P.2d 844 (Ct. App. 1992).

Adult guards, if employed, may legally be paid out of school funds. 1955-56 Op. Att'y Gen. No. 6073.

Common-law immunity of school districts probably not abrogated. - Laws 1953, ch. 139, § 89.1 (this section) probably did not abrogate common-law immunity of school districts or boards from tort liability nor does the enactment appreciably affect the present liability of school officials for negligent acts performed within the scope of their employment. 1953-54 Op. Att'y Gen. No. 59-17 (opinion rendered under former version of this section).

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, 80 N.M. 529, 458 P.2d 604 (Ct. App. 1969).

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 then would not then have correctly stated the duty imposed by law. Tenorio v. Nolen, 80 N.M. 529, 458 P.2d 604 (Ct. App. 1969).

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, 79 N.M. 566, 446 P.2d 214 (1968).

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, 107 N.M. 58, 752 P.2d 250 (Ct. App. 1988).

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.

Pedestrians shall move, whenever practicable, upon the right half of crosswalks.

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.

ANNOTATIONS

Cross references. - For penalty assessments for violations, see 66-8-116 NMSA 1978.

66-7-339. Pedestrians on roadways.

A. Where sidewalks are provided it shall be unlawful for any pedestrian to walk along and upon an adjacent roadway.

B. Where sidewalks are not provided any pedestrian walking along and upon a highway shall when practicable walk only on the left side of the roadway or its shoulder facing traffic which may approach from the opposite direction.

History: 1953 Comp., § 64-7-339, enacted by Laws 1978, ch. 35, § 443.

ANNOTATIONS

Cross references. - 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.

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, 38 N.M. 533, 37 P.2d 536 (1934).

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.

Liability for injury to pedestrian struck by automobile while walking along street or highway, 67 A.L.R. 96, 93 A.L.R. 551.

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

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.

Repeals and reenactments. - Laws 2003, ch. 51, § 8 repeals former 66-7-341 NMSA 1978, as enacted by Laws 1978, ch. 35, § 445, and enacts the above section, effective March 19, 2003. For provisions of former section, see the 1998 Replacement Pamphlet.

Performance of duty excused when conduct invites assurance of safety. - Violation of a statute designed for safety of life, limb or property is negligence as a matter of law, but performance of the duty may be excused as when the conduct of the railroad invites assurance of safety. Lester v. Atchison, T. & S.F. Ry., 275 F.2d 42 (10th Cir. 1960).

Failure to stop contributory 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 contributory negligence, as a matter of law. Blewett v. Barnes, 62 N.M. 300, 309 P.2d 976 (1957).

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, 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, 62 N.M. 300, 309 P.2d 976 (1957).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 65 Am. Jur. 2d Railroads §§ 250, 335, 361.

Failure to stop, look and listen at railroad crossing as negligence per se, 1 A.L.R. 203, 2 A.L.R. 767, 41 A.L.R. 405.

Liability for accident at point where highway leads to, but does not cross, railroad tracks, 47 A.L.R. 863.

Duty of automobilist to shut off motor at railroad crossing, 54 A.L.R. 542.

Contributory negligence of one who attempts to cross railroad tracks just after a train, or part of a train, has passed over the crossing, 56 A.L.R. 543.

Duty of driver whose view at railroad crossing is obstructed to leave vehicle in order to get an unobstructed view before crossing, 56 A.L.R. 647, 91 A.L.R. 1055.

Skidding of automobile causing collision with train, 58 A.L.R. 264, 113 A.L.R. 1002.

Increase of speed as affecting contributory negligence of one attempting to cross in front of observed approaching train, 154 A.L.R. 512.

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.

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: 1978 Comp., § 66-7-343, enacted by Laws 2003, ch. 51, § 9.

ANNOTATIONS

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.

Repeals and reenactments. - Laws 2003, ch. 51, § 8 repeals former 66-7-341 NMSA 1978, as enacted by Laws 1978, ch. 35, § 445, and enacts the above section, effective March 19, 2003. For provisions of former section, see the 1998 Replacement Pamphlet.

Compiler's notes. - Section 66-7-1 NMSA 1978, referred to in Subsection C(1), was repealed by Laws 1990, ch. 120, § 45, effective July 1, 1990. Present comparable provisions defining "business district" now appear in 66-1-4.2 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

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.

Repeals and reenactments. - Laws 1965, ch. 91, § 3, repeals 64-18-44, 1953 Comp., relating to the requirement that all vehicles and street cars must stop at stop signs, and enacts the above section.

The 2003 amendment, effective July 1, 2003, substituted "transportation commission" for "highway commission" in Subsection A.

Provision applicable to animal powered conveyance. - Section 64-18-29, 1953 Comp. (similar to 66-7-330 NMSA 1978) and this section, when read along with 64-15-6, 1953 Comp. (similar to 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, 72 N.M. 345, 383 P.2d 823 (1963).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 234, 251, 252, 255.

Duty at private crossing or driveway, 24 A.L.R. 946.

Rights and duties at intersection of arterial or other favored highway and nonfavored highway, 58 A.L.R. 1197, 81 A.L.R. 185.

60A C.J.S. Motor Vehicles §§ 359, 360; 61A C.J.S. Motor Vehicles § 714(2), (3).

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.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 7A Am. Jur. 2d Automobiles and Highway Traffic § 242.

Duty at private crossing or driveway, 24 A.L.R. 946.

Right-of-way as between vehicles in street or highway and vehicles approaching from private driveway, 50 A.L.R. 283.

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 66-7-365 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. - In New Mexico, one who violates a statute or ordinance is guilty of negligence per se, if the statute or ordinance was enacted for the benefit of the class of persons to which the injured person belongs. 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, 95 N.M. 670, 625 P.2d 1187 (Ct. App.), cert. quashed, 94 N.M. 675, 615 P.2d 992 (1980).

Contributory negligence of child. - There is no provision in this section to indicate what might constitute contributory negligence by a child crossing the street after alighting from a school bus. In the absence of any specific directive, it is presumed that the legislature intended the usual standard of the contributory negligence of a child to apply. The correct test in determining the contributory negligence of a child is whether he exercised that degree of care ordinarily exercised by children of like age, capacity, discretion, knowledge and experience under the same or similar circumstances. It is error to instruct the jury on any other standard of contributory negligence. Hernandez v. Brooks, 95 N.M. 670, 625 P.2d 1187 (Ct. App.), cert. quashed, 94 N.M. 675, 615 P.2d 992 (1980).

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, 75 N.M. 70, 400 P.2d 945 (1963).

Prohibition against passing stopped bus restricted to stops on highway. - The prohibition against passing a stopped bus, set forth in 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. 1957-58 Op. Att'y Gen. No. 57-235.

Bus signals not to protect children at traffic-controlled intersections. - It is implicit in 66-18-46, 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, 75 N.M. 70, 400 P.2d 945 (1963).

Directing nonuse of bus signals at traffic-controlled intersections proper. - Instructions to bus drivers, at schools for that purpose, by the director of school bus safety and by state police officers directing nonuse of bus signals at traffic-controlled intersections was not in the nature of advice to disregard or disobey the requirement for use of signals at all stops, but rather was that in following the directive not to operate the signals at traffic-controlled intersections there was compliance with the law. Hayes v. Hagemeier, 75 N.M. 70, 400 P.2d 945 (1963).

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 [Articles 1 to 8 of Chapter 66, except 66-7-102.1 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.

Subsection B of 64-18-47, 1953 Comp. (similar to Subsection B of this section) is restricted to the same situation as 64-18-46, 1953 Comp. (similar to 66-7-347 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. 1957-58 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.

Traffic laws for benefit of highway users. - A traffic statute such as Subsection A of 64-18-49, 1953 Comp. (similar to Subsection A of this section) was enacted for the benefit of persons using the highways. Kelly v. Montoya, 81 N.M. 591, 470 P.2d 563 (Ct. App. 1970).

Foreseeable that violations may cause accidents. - A person using the highway had the benefit of a traffic control statute because it is foreseeable that violations of a traffic

rule may cause accidents. Kelly v. Montoya, 81 N.M. 591, 470 P.2d 563 (Ct. App. 1970).

Violation is negligence per se. - As it is foreseeable that blocking the highway may cause other persons to have accidents, a violation of 64-18-49, 1953 Comp. (similar to this section) which prohibits such blocking is negligence per se. Kelly v. Montoya, 81 N.M. 591, 470 P.2d 563 (Ct. App. 1970).

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, 70 N.M. 73, 370 P.2d 799 (1962).

If impractical for car to park entirely off highway, it is not a violation of the provisions of 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, 70 N.M. 73, 370 P.2d 799 (1962).

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, which he stopped as he did, owed the duty to plaintiffs and others approaching the same, to exercise reasonable care to warn them of their peril. A failure to perform this duty was negligence and such negligence was the proximate cause of the collision, resulting in injury to the plaintiffs. Gutierrez v. Koury, 57 N.M. 741, 263 P.2d 557 (1953).

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, 55 N.M. 361, 233 P.2d 1047 (1951).

Stopping on pavement. - The only excuse for stopping on the pavement is an emergency or exigency which leaves no other choice. Turner v. Silver, 92 N.M. 313, 587 P.2d 966 (Ct. App.), cert. denied, 92 N.M. 260, 586 P.2d 1089 (1978).

Vehicle is "disabled" when it runs out of gasoline. Turner v. Silver, 92 N.M. 313, 587 P.2d 966 (Ct. App.), cert. denied, 92 N.M. 260, 586 P.2d 1089 (1978).

Violation of 64-18-49, 1953 Comp. (similar to this section) is negligence per se. It includes the element of foreseeability where plaintiff is a beneficiary of the statute violated. Kelly v. Montoya, 81 N.M. 591, 470 P.2d 563 (Ct. App. 1970).

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 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 64-18-4, 1953 Comp. (similar to 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, 83 N.M. 380, 492 P.2d 997 (Ct. App.), cert. denied, 83 N.M. 379, 492 P.2d 996 (1971).

It would be a question of fact for the jury whether a driver could have driven his vehicle off the highway before it stopped. Turner v. Silver, 92 N.M. 313, 587 P.2d 966 (Ct. App.), cert. denied, 92 N.M. 260, 586 P.2d 1089 (1978).

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, 64 N.M. 182, 326 P.2d 1073 (1958).

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, 70 N.M. 73, 370 P.2d 799 (1962).

Blocking of road by cars was not disorderly conduct under 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 64-18-49, 1953 Comp. State v. Florstedt, 77 N.M. 47, 419 P.2d 248 (1966).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 7A Am. Jur. 2d Automobiles and Highway Traffic § 271.

Liability for injury in collision with automobile standing on wrong side of street or highway, 70 A.L.R. 1021.

Parking at improper place as affecting liability for automobile accident, 73 A.L.R. 1074.

Constitutionality, construction and application of statute prescribing special precautions in passing stopped automobile, 108 A.L.R. 987.

Validity of automobile parking ordinances or regulations, 108 A.L.R. 1152, 130 A.L.R. 316.

Stopping vehicle on traveled portion of highway as affecting responsibility for collision between vehicles, 131 A.L.R. 562.

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 64-18-50, 1953 Comp. (similar to this section) did not require the vehicle to have been unattended. Trujillo v. Romero, 82 N.M. 301, 481 P.2d 89 (1971).

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.

Negligence in stopping automobile on streetcar track for purpose of taking on or letting off person, 15 A.L.R. 236.

Validity of ordinance which denies to automobiles while used for hire the parking privileges extended to automobiles generally, 22 A.L.R. 113.

Liability for injury in collision with automobile standing on wrong side of highway or street, 70 A.L.R. 1021.

Parking at improper place as affecting liability for automobile accident, 73 A.L.R. 1074.

Validity of automobile parking ordinances or regulations, 130 A.L.R. 316.

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 "Disabled Parking Standards and Enforcement Act".

History: Laws 1983, ch. 45, § 1; 1990, ch. 120, § 36; 2001, ch. 124, § 2.

ANNOTATIONS

The 1990 amendment, effective July 1, 1990, substituted "Sections 66-7-352.1 through 66-7-352.5 NMSA 1978" for "This act".

The 2001 amendment, effective June 15, 2001, substituted "66-7-352.6 NMSA 1978" for "66-7-352.5 NMSA 1978".

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 mobility-impaired persons 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 disabled persons, ensuring full and equal opportunity for the disabled to maintain independence and self-respect; and

C. that ultimately society will benefit from the increased interaction of the disabled with the mainstream that these parking spaces will provide.

History: Laws 1983, ch. 45, § 2.

ANNOTATIONS

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 repeals 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 1987 Replacement Pamphlet. 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 Disabled Parking Standards and Enforcement Act [66-7-352.1 to 66-7-352.5 NMSA 1978] shall have designated disabled parking spaces 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 disabled parking spaces as delineated in Subsection B of this section.

B. The minimum numbers of designated disabled parking spaces are as follows:

TOTAL SPACES IN PARKING LOT	MINIMUM DESIGNATED DISABLED PARKING SPACES
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 disabled parking spaces 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 disabled parking space designed to accommodate a motor vehicle passenger van, and there shall be a minimum of one such space for every eight designated disabled parking spaces.

History: Laws 1983, ch. 45, § 4; 1999, ch. 297, § 9.

ANNOTATIONS

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 disabled parking space.

B. It is unlawful for any person to park a motor vehicle in such a manner so as to block access to any part of a curb cut designed for access by persons with severe mobility impairment.

C. Any person convicted of violating Subsection A or B of this section is subject to a fine of not less than one hundred dollars ($100) or more than three hundred dollars ($300). 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.

History: Laws 1983, ch. 45, § 5; 1993, ch. 187, § 1; 1999, ch. 297, § 10.

ANNOTATIONS

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.

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.

66-7-352.6. Enforcement.

State, county and municipal law enforcement personnel have the authority to 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.

History: 1978 Comp., § 66-7-352.6, enacted by Laws 2001, ch. 124, § 3.

ANNOTATIONS

Effective dates. - Laws 2001, ch. 124 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 15, 2001, 90 days after adjournment of the legislature.

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.

Purpose of section. - Purpose of enacting this section was to prevent acts which could lead to an automobile inadvertently moving without intention and to further the welfare and safety of the motoring public. Bouldin v. Sategna, 71 N.M. 329, 378 P.2d 370 (1963).

This section was enacted for the purpose of promoting public welfare and safety. Richardson v. Carnegie Library Restaurant, Inc., 107 N.M. 688, 763 P.2d 1153 (1988), overruled on other grounds, Trujillo v. City of Albuquerque, 1998-NMSC-031, 125 N.M. 721, 965 P.2d 305 (1998).

Theft of car is not natural event to be foreseen by a person who is negligent in leaving his car unattended with the key in the ignition. Bouldin v. Sategna, 71 N.M. 329, 378 P.2d 370 (1963).

Motorist negligently leaving keys not liable for injuries after theft. - Motorist who negligently left keys in the ignition of his truck and left the truck unattended was not liable for injuries received by motorists who collided with the truck after the truck had

been abandoned in the middle of a highway. Bouldin v. Sategna, 71 N.M. 329, 378 P.2d 370 (1963).

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 shall ride only upon the permanent and regular seat attached thereto, shall have his 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 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 his feet upon the footrests attached for passenger use.

B. Any 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 director.

History: 1953 Comp., § 64-7-355, enacted by Laws 1978, ch. 35, § 459; 1981, ch. 361, § 25; 1991, ch. 160, § 17.

ANNOTATIONS

Cross references. - For the definitions of "motorcycles," see 66-1-4.11 NMSA 1978, respectively.

For required motorcycle equipment, see 66-3-840 to 66-3-842 NMSA 1978.

For off-highway motorcycles generally, see 66-3-1001 to 66-3-1016 NMSA 1978.

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.

Motorcycle as within statute or ordinance in relation to motorcars, motor-driven cars, etc., 48 A.L.R. 1090, 70 A.L.R. 1253.

Reciprocal duties of driver of automobile and bicyclist or motorcyclist, 172 A.L.R. 736.

"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 he is wearing a safety helmet securely fastened on his head in a normal manner as headgear and meeting the standards specified by the director. The director 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 director. 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 director.

B. Failure to wear a safety helmet as required in this section shall not constitute contributory negligence.

History: 1953 Comp., § 64-7-356, enacted by Laws 1978, ch. 35, § 460; 1981, ch. 361, § 26; 1991, ch. 192, § 6.

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 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.

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.

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, 87 N.M. 486, 535 P.2d 1337 (1975).

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, 87 N.M. 486, 535 P.2d 1337 (1975).

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.

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 television in motor vehicles.

It is unlawful to operate in this state any motor vehicle equipped with a television 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 television is used solely as an aid to the driver in the operation of the vehicle. As used in this section "television 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.

ANNOTATIONS

The 1989 amendments. - Laws 1989, ch. 318, § 31, effective July 1, 1989, making minor stylistic changes and adding "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, was approved on April 7, 1989. However, Laws 1989, ch. 321, § 1, effective June 16, 1989, deleting "of whatever type" following "television screen" and adding "unless the television is used solely as an aid to the driver in the operation of the vehicle" in the first sentence, adding the second sentence, and making minor stylistic changes, was approved later on April 7, 1989. The section is set out as amended by Laws 1989, ch. 321, § 1. See 12-1-8 NMSA 1978.

66-7-359. Driving on mountain highways.

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.

History: 1953 Comp., § 64-7-359, enacted by Laws 1978, ch. 35, § 463; 1989, ch. 318, § 32.

ANNOTATIONS

The 1989 amendment, effective July 1, 1989, made a minor stylistic change and deleted, at the end of the section, "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".

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.

The driver of any motor vehicle when traveling upon a down grade shall not coast with the clutch disengaged.

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.

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.

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 which 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 which 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 said roads and highways and livestock or animals ranging in said pastures unless such owner of livestock is guilty of specific negligence other than allowing his animals to range in said pasture.

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.

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.

Purpose of this section is to protect the motoring public. Mitchell v. Ridgway, 77 N.M. 249, 421 P.2d 778 (1966); Roderick v. Lake, 108 N.M. 696, 778 P.2d 443 (Ct. App. 1989).

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, 117 N.M. 171, 870 P.2d 133 (Ct. App. 1994).

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, 72 N.M. 345, 383 P.2d 823 (1963).

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, 83 N.M. 116, 489 P.2d 181 (Ct. App. 1971).

Even before the 1965 amendment to this section (which inserted "negligently" before "to permit" in Subsection B), the word "permit," and the fact that 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, 79 N.M. 432, 444 P.2d 617 (Ct. App. 1968).

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, 87 N.M. 389, 534 P.2d 481 (1975).

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, 77 N.M. 249, 421 P.2d 778 (1966).

Trier of facts determines whether owner of animal used reasonable care to restrain his livestock. Mitchell v. Ridgway, 77 N.M. 249, 421 P.2d 778 (1966).

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.

66-7-364. 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

Cross references. - For placing injurious substances on highways, see 30-8-10 NMSA 1978.

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 recompiles 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

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.

Repeals and reenactments. - Laws 1967, ch. 232, § 8, repeals 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, enacts the above section.

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.

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; and

(3) children five years of age through twelve years of age shall be secured in a child passenger restraint device or by a seat belt.

C. Failure to be secured by a child passenger restraint device 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.

ANNOTATIONS

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.

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".

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 repeals 66-7-371 NMSA 1978, as enacted by Laws 1985, ch. 131, § 2, defining passenger car, effective June 16, 1989. For provisions of former section, see 1987 Replacement Pamphlet.

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

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.

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.

Federal motor vehicle safety standard number 208. - See 49 C.F.R. § 571.208.

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, 112 N.M. 302, 814 P.2d 1030 (Ct. App. 1991).

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, 112 N.M. 302, 814 P.2d 1030 (Ct. App. 1991).

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 to 66-7-373 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 [66-7-370 to 66-7-373 NMSA 1978] 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 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.

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 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 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."

Constitutionality. - Subsection B (now Subsection A) does not violate the equal protection provisions of the United States and New Mexico Constitutions. Armijo v. Atchison, T. & S.F. Ry., 754 F. Supp. 1526 (D.N.M. 1990), rev'd in part on other grounds, 19 F.3d 547 (10th Cir. 1994).

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., 120 N.M. 261, 901 P.2d 192 (Ct. App. 1995).

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., 120 N.M. 261, 901 P.2d 192 (Ct. App. 1995).

Limiting the defendant's use of a seat belt defense did not violate due process. Mott v. Sun Country Garden Prods., Inc., 120 N.M. 261, 901 P.2d 192 (Ct. App. 1995).

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., 120 N.M. 261, 901 P.2d 192 (Ct. App. 1995).

Or to reduce damages. - 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 (1999).

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 (1999).

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).

PART 5
WEIGHT AND SIZE LIMITATIONS

66-7-401. Scope and effect of article [part]

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 or vehicles 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 said 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 said limitations except as express authority may be granted in said sections.

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.

History: 1953 Comp., § 64-7-401, enacted by Laws 1978, ch. 35, § 472.

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.

Provisions within police powers of legislature. - The supreme court held that the legislature by enacting Laws, 1955, ch. 37 (similar to 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, 61 N.M. 123, 295 P.2d 1028 (1956).

Enactment of provisions not referable. - Laws 1955, ch. 37 (similar to 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. 1955-56 Op. Att'y Gen. No. 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. 1955-56 Op. Att'y Gen. No. 6262.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 171, 198 to 201.

Conflict between statutes and local regulations as to weight or width regulations, 64 A.L.R. 993, 147 A.L.R. 522.

Size or weight of automobile or load involved in accident as factor in determining responsibility, 85 A.L.R. 1173.

Constitutionality and construction of statutes as regards dimensions of motor vehicles, or combinations of motor vehicles, 86 A.L.R. 281.

Exclusion of vehicles from certain streets on basis of weight or size, 121 A.L.R. 586.

Construction and application of statute or ordinance designed to prevent use of vehicles or equipment thereof injurious to the highway, 134 A.L.R. 550.

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 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.

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".

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.

Size or weight of automobile or load involved in accident as factor in determining responsibility, 85 A.L.R. 1173.

Constitutionality and construction of statutes as regards dimensions of motor vehicles, 86 A.L.R. 281.

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. No vehicle shall exceed a height of fourteen feet.

B. No vehicle shall 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. No combination of vehicles, unless otherwise exempted in this section, shall exceed an overall length of sixty-five feet, exclusive of front and rear bumpers.

C. No combination of vehicles coupled together shall 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 his farming or ranching operations; and

(6) as provided in Subsections D and E 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 United States Surface Transportation Assistance Act of 1982, Public Law 97-424, Section 411, and on those highways designated by the department by rule or regulation with the concurrence of the state highway and transportation department 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 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. Notwithstanding any other subsection of this section, any 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.

ANNOTATIONS

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

The 1989 amendments. - Laws 1989, ch. 52, § 1, effective June 16, 1989, substituting "fourteen feet" for "thirteen feet six inches" in Subsection A; in Subsection C substituting "shall" for "will" several times in the first sentence; and in Subsection E substituting "motor transportation division of the taxation and revenue department" for "United States department of transportation" and "state highway and transportation department" for "state highway department" in the first sentence and "motor transportation division of the taxation and revenue department" for "transportation department" in the second sentence, was approved on March 15, 1989. However, Laws 1989, ch. 318, § 33, effective July 1, 1989, substituting 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 deleting "including any load thereon" preceding "shall"; making minor stylistic changes in Subsection C; and in Subsection E substituting "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, was approved on April 7, 1989. The section is set out as amended by Laws 1989, ch. 318, § 33. See 12-1-8 NMSA 1978.

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 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 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.

Compiler's notes. - Section 411 of Public Law 97-424, referred to in the first sentence in Subsection D, appears as 49 U.S.C.S. § 31111 et seq.

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. 1961-62 Op. Att'y Gen. No. 61-39.

State transportation commission cannot legally issue permits for the movement of trucks in driveaway-towaway saddle mount combinations of more than one towed vehicle. 1959-60 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.

Size or weight of automobiles or load involved in accident as factor in determining responsibility, 85 A.L.R. 1173.

Constitutionality and construction of statutes as regards dimensions of motor vehicles, or combinations of motor vehicles, 86 A.L.R. 281.

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

Cross references. - For the definition of "motorcycle," see 66-1-4.11 NMSA 1978.

Repeals and reenactments. - Laws 1973, ch. 20, § 1, repeals 64-23-15.1, 1953 Comp., relating to minimum motor vehicle wheelbase, and enacts the above section.

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 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.

The 1997 amendment added the second sentence in Subsection A. Laws 1997, ch. 94 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

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 by trailer, 3 A.L.R. 618, 84 A.L.R. 281.

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. 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.

History: 1953 Comp., § 64-7-409, enacted by Laws 1978, ch. 35, § 480; 1993, ch. 328, § 5.

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 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.

Size or weight of automobile or load involved in accident as factor in determining responsibility, 85 A.L.R. 1173.

Construction and application of statute or ordinance designed to prevent use of vehicles or equipment thereof injurious to the highway, 134 A.L.R. 550.

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, 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 groups 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. 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 groups 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.

History: 1953 Comp., § 64-7-410, enacted by Laws 1978, ch. 35, § 481.

ANNOTATIONS

Cross references. - For definitions of "combination," "gross vehicle weight" and "gross 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.

Single axle and gross weight provisions construed harmoniously. - The limitations provided in 64-23-20, 1953 Comp. (similar to this section) are subject to 64-23-19, 1953 Comp. (similar to 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. Any police officer with the motor transportation division or 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 if the scales are within five miles.

B. When a police officer with the motor transportation division or New Mexico state police division of the department of the [sic] 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. Any 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 motor transportation division or 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. Any shipper or any other person loading the vehicle who intentionally overloads a vehicle which he 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 Subsection E of this section.

E. In all cases of violations of weight limitations, the penalties shall be assessed and imposed in accordance with the following schedule:

WEIGHT OF EXCESS LOAD IN POUNDS	AMOUNT OF FINE
1 to 3,000	twenty-five dollars ($25.00)
3,001 to 4,000	forty dollars ($40.00)
4,001 to 5,000	seventy-five dollars ($75.00)
5,001 to 6,000	one hundred twenty-five dollars ($125)
6,001 to 7,000	two hundred dollars ($200)
7,001 to 8,000	two hundred seventy-five dollars ($275)
8,001 to 9,000	three hundred fifty dollars ($350)
9,001 to 10,000	four hundred twenty-five dollars ($425)
over 10,000	five hundred dollars ($500).

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.

ANNOTATIONS

Bracketed material. - The bracketed material in Subsection B was inserted by the compiler. It was not enacted by the legislature and is not part of the law.

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.

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.

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 motor transportation division of the department of public safety 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 motor transportation division 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.

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 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 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 any 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 any person to violate any of the conditions or terms of the special permit.

B. The department shall charge and collect, when the movement consists of any load of a width of twenty feet or greater for a distance of five miles or more, the sum of three hundred dollars ($300) a day or fraction thereof to defray the cost of state or local police escort. The permit issued and the fee charged shall be based upon the entire movement at one time requiring police escort and not upon the number of vehicles involved.

C. The department shall promulgate regulations 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 himself and for escort vehicles provided by a private business in this state.

(1) If a motor carrier provides his own escort vehicles and personnel, the department shall not charge an escort fee but shall provide the motor carrier escort personnel with a copy of applicable regulations and shall inspect the escort vehicles for the safety equipment required by the regulations. If the escort vehicles and personnel meet the requirements set forth in the regulations and if the motor carrier holds a valid certificate of public convenience and necessity or permit, as applicable, issued pursuant to Chapter 65, Article 2 NMSA 1978, the department shall issue the special permit.

(2) If the escort service is a private business, the business shall have applied to the public regulation commission for and been issued a permit or certificate to operate as a contract or common motor carrier pursuant to Chapter 65, Article 2 NMSA 1978. The public regulation commission shall supply copies of applicable regulations to the business by mail and shall supply additional copies upon request. If the escort vehicles and personnel meet the requirements set forth in the regulations and if the escort service holds a certificate, the special permit shall be issued and the department shall not charge an escort fee.

(3) 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 Paragraphs (1) and (2) of this subsection is subject to department authority and inspection at all times.

(4) The state highway and transportation department 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 state highway and transportation department shall hold public hearings in the area of the state affected by the determination, after which it may adopt regulations designating those four-lane highways as being safe for the operation or movement of manufactured homes without an escort. If any portion of such a four-lane highway lies within the boundaries of a municipality, the state highway and transportation department, after obtaining the approval of the municipal governing body, shall include such portions in its regulations.

D. Except for the movement of manufactured homes, special permits may be issued for a single vehicle or combination of vehicles by the department for a period not to exceed one year for a fee of sixty dollars ($60.00). The 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 operation is to be within the vicinity of a municipality. 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.

E. 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 for a single vehicle for a fee of fifteen dollars ($15.00).

F. If the vehicle for which a permit is issued under this section is a manufactured home, the department or local highway authority issuing the permit shall furnish the following information to the property tax division of the department, which shall then forward the information:

(1) to the county assessor of any 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.

G. Except as provided in Subsection H of this section, if the movement of a manufactured home originates in this state, no permit shall be issued under Subsection F of this section until the owner of the manufactured home or his authorized agent obtains and presents to the department 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) no liability for property taxes on the manufactured home exists for the current tax year or any past tax years, except for manufactured homes located on an Indian reservation.

H. 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 G 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 his inventory prior to the sale to the owner-purchaser; however, the movement of a manufactured home by a dealer or his authorized agent as a result of a sale or trade-in from a nondealer-owner is subject to the requirements of Subsection G of this section whether the destination is the business location of a dealer or some other destination.

I. No permit shall be issued under 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.

J. The secretary may by regulation provide for movers of manufactured homes to self-issue permits for certain sizes of manufactured homes over specific routes; however, in no case may the cost of each permit be less than fifteen dollars ($15.00).

K. The secretary may provide by regulation 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 shall charge a fee for each self-issued permit not to exceed fifteen dollars ($15.00).

L. Any 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.

M. Any common motor carrier requesting an oversize permit shall produce a copy of a form "e" or other acceptable evidence that the common motor carrier maintains the insurance minimums prescribed by the public regulation commission.

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.

ANNOTATIONS

Cross references. - For the definition of "mobile home," see 66-1-4.11 NMSA 1978.

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 highway commission [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 references to state corporation commission being construed as references to the public regulation commission, see 8-8-21 NMSA 1978.

For motor transportation division in department of public safety, see 9-11-4 NMSA 1978.

For state highway department, see 67-3-6 NMSA 1978.

The 1986 amendment substituted "three hundred dollars ($300)" for "one hundred fifty dollars ($150)" in the first sentence of Subsection B.

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 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 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.

2003 amendments. - Laws 2003, ch. 361, § 1, effective July 1, 2003, substituting "state transportation commission" for "state highway commission" in the first sentence of Subsection A; substituting "public regulation commission" for "state corporation commission" in the first and second sentences of Paragraph C(2) and at the end of Subsection M; adding the last sentence in D; and inserting "of the department" following "tax division" in F, was approved April 8, 2003.

Laws 2003, ch. 141, § 4 would have added "of public safety" following "department" throughout; substituted "state transportation commission" for "state highway commission" in Subsection A; substituted "public regulation commission" for "state corporation commission" throughout Subsection C; inserted "of the taxation and revenue department" after "property tax division" in Subsection F; inserted "of public safety" following "secretary" in Subsections J and K; and added Subsection N as follows:

"N. The department of public safety may provide by regulation 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."

Laws 2003, ch. 142, § 23 would have substituted "transportation commission" for "highway commission" in Subsection A; substituted "public regulation commission" for "state corporation commission" in Paragraphs C(1), C(2) and Subsection M; substituted "department of transportation" for "state highway and transportation department" in Paragraphs A and C(4); and inserted "of the department" following "tax division" in Subsection F.

Laws 2003, ch. 359, § 42 would have substituted "transportation" for "highway" in the first sentence of Subsection A; rewrote Subsection C; inserted "of the department" in the first sentence of Subsection F; and rewrote Subsection M.

This section is set out as amended by Laws 2003, ch. 361, § 1. See 12-1-8 NMSA 1978.

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, 41-4-1 to 41-4-27 NMSA 1978, as such activity is within the scope of the waiver provision, 41-4-11 NMSA 1978. Miller v. New Mexico Dep't of Transp., 106 N.M. 253, 741 P.2d 1374 (1987).

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. Such statutory limitations must be reasonable and not arbitrary and must be based on the power to exercise police powers for the promotion or protection of public safety and welfare. 1961-62 Op. Att'y Gen. No. 62-105.

Otherwise void as infringement of ownership right. - Recognizing that the state highway commission [state transportation commission] (now state transportation commission) has the power to enforce the statute and to supplement it with rules and regulations, 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. 1961-62 Op. Att'y Gen. No. 62-105.

Power to issue permits discretionary. - Section 64-23-22, 1953 Comp. (similar to this section), gives the motor transportation department (now state transportation commission) discretionary power to issue permits allowing the operation of vehicles

which are not in compliance with the weight and size limitation contained in 64-23-12 through 64-23-25, 1953 Comp. (similar to 66-7-401 to 66-7-416 NMSA 1978). 1969 Op. Att'y Gen. No. 69-18.

Test is if action reasonably necessary. - The motor transportation department (now state transportation commission) may issue permits to allow combinations of vehicles which exceed those standards set out in 64-23-15, 1953 Comp. (similar to 66-7-404 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 state transportation commission) may, in its discretion, grant a permit if the conditions prescribed by 64-23-22, 1953 Comp. (similar to this section), have been met to the commission's satisfaction. In other words, good cause must be shown why it is reasonably necessary that the applicant operate the subject vehicle on the highways of the state. 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. 1961-62 Op. Att'y Gen. No. 62-105.

Escort fee collected only if police do escorting. - The specificity of 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 state transportation commission) 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.

66-7-413.1. Farm carriers; excessive size; limitation.

Farm carriers, as defined in Sections 65-2-82 and 65-2-116 NMSA 1978, may transport loads up to twelve feet in width on highways that are not national network highways without securing permits or escorts only if the load consists of hay tied in bales over five feet in either length or width and the load is not transported for any distance greater than fifty miles; provided that the farm carriers display a sign across the front and rear stating "WIDE LOAD" in large visible letters.

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.

ANNOTATIONS

The 1993 amendment, effective July 1, 1993, deleted "six inches" after "twelve feet".

1995 amendments. - Laws 1995, ch. 28, § 1, effective June 16, 1995, substituting "two hundred miles" for "fifty miles", was approved March 17, 1995. However, Laws 1995, ch. 135, § 23, effective June 16, 1995, also amending this section by inserting "on highways that are not national network highways" following "twelve feet in width", and making a minor stylistic change, but not giving effect to the changes made by the first 1995 amendment, was approved April 5, 1995. The section is set out as amended by Laws 1995, ch. 135, § 23. See 12-1-8 NMSA 1978.

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 motor transportation division of the department of public safety and the local highway authorities all pertinent information requested of the applicant by the motor transportation division of the department of public safety. If the submitted data is not acceptable to the state highway and transportation department, the applicant will be advised by the motor transportation division of the department of public safety that engineering investigations will be conducted by the state highway and transportation department and the cost incurred by the state highway and transportation department will be paid by the applicant as an added cost to his permit fee.

B. The motor transportation division of the department of public safety shall adopt the necessary rules and regulations 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 motor transportation division of the department of public safety 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 motor transportation division of the department of public safety.

D. Any person who violates the provisions of Subsection A of this section shall be guilty of a misdemeanor and 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 thereof to collect damages for any unlawful use of highways as provided by law.

History: 1978 Comp., § 66-7-413.2, enacted by Laws 1989, ch. 291, § 1; 2003, ch. 141, § 5.

ANNOTATIONS

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 repeals 66-7-413.3 NMSA 1978, as amended by Laws 1997, 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 1998 Replacement Pamphlet.

66-7-413.4. Permits for excessive weight.

A. In addition to the authority granted in Section 66-7-413 NMSA 1978, the motor transportation division of the department of public safety 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 Section 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.

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. No special permit issued pursuant to this section shall be valid for gross vehicle weights in excess of eighty-six thousand four hundred pounds or for any 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, then the secretary shall reissue the special permits previously withdrawn and make the special permits available pursuant to this section.

History: 1978 Comp., § 66-7-413.4, enacted by Laws 2001, ch. 20, § 2.

ANNOTATIONS

Emergency clauses. - Laws 2001, ch. 20, § 4 makes the act effective immediately. Approved March 13, 2001.

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 state highway and transportation department 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: 1978 Comp., § 66-7-413.5, enacted by Laws 2003, ch. 333, § 1.

ANNOTATIONS

Effective dates. - Laws 2003, ch. 333 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 2003, 90 days after adjournment of the legislature.

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 [Articles 1 to 8 of Chapter 66, except 66-7-102.1 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 the size or weight thereof, on designated streets in areas that are primarily residential, which prohibitions and limitations shall be designated by appropriate signs placed on such 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 any street affected, and the ordinance or resolution shall not be effective unless and until such signs are erected and maintained and notice thereof given in writing to the nearest officer or employee of the motor transportation 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 on and after the passage of a resolution and when signs giving notice thereof are erected upon the highway or portion of any highway affected by such resolution. The commission shall deliver a copy of all restrictions adopted by it to the motor transportation 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.

ANNOTATIONS

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.

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".

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 [66-7-501 to 66-7-513 NMSA 1978]:

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 [66-7-501 to 66-7-513 NMSA 1978].

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 chairman and a voting member of the committee. The governor shall appoint three members, to terms coterminous with his 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 state department of public education; and

(3) one member who is representative of the motor transportation division of the taxation and revenue department.

B. Appointees who are public officers or public employees shall be compensated for attendance at meetings according to the Per Diem and Mileage Act [10-8-1 to 10-8-7 NMSA 1978]. 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.

ANNOTATIONS

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 director and the secretary of highway and 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 state department of public education 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; and

N. include at least two hours of DWI prevention and education training in all driver education courses 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.

ANNOTATIONS

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.

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 1993 amendment, effective July 1, 1993, inserted present Subsection L and redesignated former Subsections L and M as present Subsections M and N.

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 Uniform Anatomical Gift Act [24-6A-1 to 24-6A-15 NMSA 1978].

History: Laws 2000, ch. 54, § 11.

ANNOTATIONS

Effective dates. - Laws 2000, ch. 54 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 17, 2000, 90 days after adjournment of the legislature.

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 generally, 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 [66-7-501 to 66-7-513 NMSA 1978]. 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

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 64-33-7, 1953 Comp. (similar to this section), the approval of the governor must be secured. Upon approval by the governor, the moneys should be deposited with the state treasurer. And it is apparent that 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. 1957-58 Op. Att'y Gen. No. 57-241.

Funds expended upon director's voucher. - 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. 1957-58 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.

For Brain Injury Services Fund, see 24-1-24 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 handicapped access; 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: 1978 Comp., § 66-7-513, enacted by Laws 2003, ch. 148, § 2.

ANNOTATIONS

Effective dates. - Laws 2003, ch. 148 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 2003, 90 days after adjournment of the legislature.

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

Section 64-10-1, 1953 Comp. (similar to this section) was not a part of the Criminal Code. State v. Sawyers, 79 N.M. 557, 445 P.2d 978 (Ct. App. 1968).

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. 1953-54 Op. Att'y Gen. No. 5654.

Violation of former license laws precluded recovery for loss of use of vehicle by one entitled to recovery of possession in replevin action. Desmet v. Sublett, 54 N.M. 355, 225 P.2d 141 (1950).

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; 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, 79 N.M. 557, 445 P.2d 978 (Ct. App. 1968).

Classification of violation as misdemeanor not repugnant to authorized imprisonment. - Although as amended, 64-10-7, 1953 Comp. (similar to 66-8-7 NMSA 1978), classifies a violation of 64-10-1, 1953 Comp. (similar to this section), as a misdemeanor, this classification is not repugnant to the imprisonment authorized by 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, 64-10-7, 1953 Comp., as amended, is reconcilable with 64-10-1, 1953 Comp. The doctrine of repeal by implication is not applicable. State v. Sawyers, 79 N.M. 557, 445 P.2d 978 (Ct. App. 1968).

Since imprisonment provision allowed exception to general misdemeanor sentence. - By 64-10-7, 1953 Comp. (similar to 66-8-7 NMSA 1978), 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 this section), specifies such a penalty. It authorizes imprisonment for not more than one year. State v. Sawyers, 79 N.M. 557, 445 P.2d 978 (Ct. App. 1968).

"Not less than one year" portion of defendant's sentence is void because it is in excess of the court's sentencing authority because 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, 79 N.M. 557, 445 P.2d 978 (Ct. App. 1968).

State penitentiary proper place of confinement for violation. - The place of confinement for misdemeanors under the Criminal Code is the county jail under 31-19-1 NMSA 1978. This section is not applicable because defendant violated 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, 79 N.M. 557, 445 P.2d 978 (Ct. App. 1968).

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.

66-8-2. 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 [Articles 1 to 8 of Chapter 66, except 66-7-102.1 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.

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. - In a prosecution for holding or using an altered license plate, a jury instruction was sufficient that conveyed the requirement that there had to be an underlying illegal alteration of the plate and conveyed the essential nature of the required element of intent without defining exactly what constituted an illegal alteration in violation of Subsection D. State v. Ortiz, 120 N.M. 743, 906 P.2d 734 (Ct. App. 1987).

Am. Jur. 2d, A.L.R. and C.J.S. references. - License tax or fee on automobiles as affected by interstate commerce clause, 25 A.L.R. 37, 52 A.L.R. 533, 115 A.L.R. 1105.

Constitutionality, construction and effect of statutes in relation to foreign owned vehicles operating within state, 82 A.L.R. 1091, 138 A.L.R. 1499.

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: 1978 Comp., § 66-8-3.1, enacted by Laws 1991, ch. 179, § 1.

ANNOTATIONS

Severability clauses. - Laws 1991, ch. 179, § 2 provides 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 [Articles 1 to 8 of Chapter 66, except 66-7-102.1 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 wrecker or [of] vehicles.

The division may suspend or revoke a certificate or the special plate issued to a manufacturer, dealer or wrecker of vehicles upon determining that any said 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.

ANNOTATIONS

Cross references. - For special plates generally, see 66-3-401 NMSA 1978 et seq.

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 [Articles 1 to 8 of Chapter 66, except 66-7-102.1 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)".

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 (1998).

Applicability of 31-18-13 NMSA 1978. - Subsection B is governed by the provisions of 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, 31-18-13D NMSA 1978 applies. State v. Mendoza, 115 N.M. 772, 858 P.2d 860 (Ct. App.), cert. denied, 115 N.M. 359, 857 P.2d 481 (1993).

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, 64-10-7, 1953 Comp. (similar to this section), classifies a violation of 64-10-1, 1953 Comp. (similar to 66-8-1 NMSA 1978), as a misdemeanor, this classification is not repugnant to the imprisonment authorized by 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, 64-10-7, 1953 Comp., as amended, is reconcilable with 64-10-1, 1953 Comp. The doctrine of repeal by implication is not applicable. State v. Sawyers, 79 N.M. 557, 445 P.2d 978 (Ct. App. 1968).

Since imprisonment provision allowed exception to general misdemeanor sentence. - By 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 66-8-1 NMSA 1978), specifies such a penalty. It authorizes imprisonment for not more than one year. State v. Sawyers, 79 N.M. 557, 445 P.2d 978 (Ct. App. 1968).

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.

For discussion of legislative history of this section, see State v. Barela, 95 N.M. 349, 622 P.2d 254 (Ct. App. 1980), overruled on other grounds, State v. Yazzie, 116 N.M. 83, 860 P.2d 213 (Ct. App. 1993).

Administrative penalties not "another penalty". - When 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 64-3-14, 1953 Comp., (similar to 66-3-19 NMSA 1978), do not meet this test. 1961-62 Op. Att'y Gen. No. 61-72.

Criminal penalties not exclusion of imposition of administrative penalties. - The criminal penalties prescribed by 64-10-7, 1953 Comp. (similar to this section), do not exclude imposition of the administrative penalties prescribed by 64-3-14, 1953 Comp. (similar to 66-3-19 NMSA 1978). 1961-62 Op. Att'y Gen. No. 61-72.

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, 118 N.M. 466, 882 P.2d 57 (Ct. App. 1994).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 61A C.J.S. Motor Vehicles § 594.

66-8-8. Sunday actions.

Judicial proceedings under any provision of the Motor Vehicle Code [Articles 1 to 8, Chapter 66 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 [Articles 1 to 8 of Chapter 66, except 66-7-102.1 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: 1953 Comp., § 64-8-9, enacted by Laws 1978, ch. 35, § 507; 1981, ch. 12, § 1.

ANNOTATIONS

For discussion of legislative history of this section, see State v. Barela, 95 N.M. 349, 622 P.2d 254 (Ct. App. 1980), overruled on other grounds, State v. Yazzie, 116 N.M. 83, 860 P.2d 213 (Ct. App. 1993).

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 injury by vehicle.

A. Homicide by vehicle is the killing of a human being in the unlawful operation of a motor vehicle.

B. Great bodily injury 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. Any person who commits homicide by vehicle or great bodily injury 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 [Articles 1 to 8 of Chapter 66, except 66-7-102.1 NMSA 1978] shall not per se be a basis for violation of Section 66-8-113 NMSA 1978.

D. Any person who commits homicide by vehicle or great bodily injury by vehicle while under the influence of intoxicating liquor or while under the influence of any drug, as provided in Subsection C of this section, who has incurred a prior DWI conviction within ten years of the occurrence for which he is being sentenced under this section, shall have his basic sentence increased by two years for each prior DWI conviction.

E. 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 when the criminal act is driving under the influence of alcohol or drugs.

F. Any 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 injury 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.

ANNOTATIONS

I. General Consideration.
II. Double Jeopardy.
III. Reckless or Intoxicated.

I. GENERAL CONSIDERATION.

Cross references. - For the penalty for a felony, see 66-8-9 NMSA 1978.

The 1989 amendment, effective June 16, 1989, added Subsection D.

The 1991 amendment, effective July 1, 1991, added Subsections D and E and redesignated former Subsection D as Subsection F.

- 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, State v. Rupe, 130 N.M. 167, 21 P.3d 36 (2001).

Constitutionality. - Subsection D is not unconstitutionally ambiguous. State v. House, 2001-NMCA-011, 130 N.M. 418, 25 P.3d 257, cert. denied, State v. Rupe, 130 N.M. 167, 21 P.3d 36 (2001).

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, 93 N.M. 346, 600 P.2d 292 (Ct. App.), cert. quashed, 92 N.M. 532, 591 P.2d 286 (1979).

This section, not 30-6-1 NMSA 1978, is the applicable statute governing child abuse resulting in death, where the death was caused by the operation of a vehicle while intoxicated. State v. Santillanes, 2000-NMCA-017, 128 N.M. 752, 998 P.2d 1203, cert. denied, 128 N.M. 689, 997 P.2d 821 (2000).

Each homicide constitutes a 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, State v. Rupe, 130 N.M. 167, 21 P.3d 36 (2001).

Involuntary manslaughter statute preempted. - This section preempts the involuntary manslaughter statute, 30-2-3 NMSA 1978, in unintentional vehicular homicide cases. State v. Yarborough, 120 N.M. 669, 905 P.2d 209 (Ct. App. 1995), aff'd, 1996-NMSC-068, 122 N.M. 596, 930 P.2d 131.

Provision does not repeal involuntary manslaughter provision. - The involuntary manslaughter statute (30-2-3 NMSA 1978) was in no sense repealed by adoption of the negligent homicide statute, but has been in full force and effect at all times - cases of death resulting from driving while under the influence of intoxicating liquor being taken out from under its operation by adoption of this section. State v. Deming, 66 N.M. 175, 344 P.2d 481 (1959).

There is no such crime as homicide by vehicle by careless driving. State v. Yazzie, 116 N.M. 83, 860 P.2d 213 (Ct. App. 1993), overruled on other grounds, State v. Yarborough, 1996-NMSC-068, 122 N.M. 596, 930 P.2d 131 (1996).

"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, 103 N.M. App. 643, 711 P.2d 920 (1985).

"Great bodily injury by vehicle". - The definition of "great bodily injury by vehicle" in Subsection B is not unconstitutionally vague. The term "protracted impairment" in 30-1-12A NMSA 1978 is capable of reasonable application by a jury of common intelligence after consideration of the circumstances involved. State v. Jim, 107 N.M. 779, 765 P.2d 195 (Ct. App. 1988).

Intent involved that of mental state of conscious wrongdoing. - The criminal intent involved in 64-22-1, 1953 Comp. (similar to this section), is that of a mental state of conscious wrongdoing, but no specific intent is involved. Voluntarily driving a vehicle while under the influence of alcohol or drugs is an act malum in se and under 64-22-1, 1953 Comp., is substantial evidence of criminal intent. State v. Dutchover, 85 N.M. 72, 509 P.2d 264 (Ct. App. 1973).

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, 83 N.M. 571, 494 P.2d 984 (Ct. App. 1972).

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, 88 N.M. 16, 536 P.2d 280 (Ct. App. 1975).

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.

Quantum of proof required for conviction of homicide by vehicle while driving recklessly would be similar to that required for a conviction of involuntary manslaughter under prior law. State v. Sandoval, 88 N.M. 267, 539 P.2d 1029 (Ct. App. 1975).

Manslaughter by automobile must be proven beyond reasonable doubt. - The burden of proof on the part of the state to support a charge of manslaughter by

automobile beyond a reasonable doubt is clearly established in New Mexico. State v. Rice, 58 N.M. 205, 269 P.2d 751 (1954).

Rules concerning contributory negligence have no application to homicide cases under 64-22-1, 1953 Comp. (similar to this section). State v. Myers, 88 N.M. 16, 536 P.2d 280 (Ct. App. 1975).

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, 88 N.M. 267, 539 P.2d 1029 (Ct. App. 1975).

Even though driver was tried upon charge of negligent homicide as provided in 64-22-1, 1953 Comp., and the section was subsequently repealed by Laws 1957, ch. 239, the prosecution was not abated because of such repeal. State v. Tracy, 64 N.M. 55, 323 P.2d 1096 (1958).

Unborn viable fetus is not a human being for purposes of vehicular homicide. State v. Willis, 98 N.M. 771, 652 P.2d 1222 (Ct. App. 1982).

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, 98 N.M. 771, 652 P.2d 1222 (Ct. App. 1982).

Only killings involving violation of 66-8-102 or 66-8-113 NMSA 1978 were declared felonies prior to the 1989 amendment to this section, with punishment under 66-8-9 NMSA 1978; other killings, not declared to be felonies, were misdemeanors with punishment under 66-8-7B NMSA 1978. State v. Barela, 95 N.M. 349, 622 P.2d 254 (Ct. App. 1980), overruled on other grounds, State v. Yazzie, 116 N.M. 83, 860 P.2d 213 (Ct. App. 1993).

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, 102 N.M. 274, 694 P.2d 922 (1985).

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, State v. Rupe, 130 N.M. 167, 21 P.3d 36 (2001).

Vehicular homicide by reckless conduct is lesser included offense of depraved mind murder by vehicle. State v. Ibn Omar-Muhammad, 102 N.M. 274, 694 P.2d 922 (1985).

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, 105 N.M. 788, 737 P.2d 1165 (1987).

Trial court must give requested instructions on vehicular homicide while under the influence of drugs as a lesser included offense of first degree depraved mind murder only where the evidence could support a conviction for the lesser offense. State v. Omar-Muhammad, 105 N.M. 788, 737 P.2d 1165 (1987).

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, 113 N.M. 25, 822 P.2d 122 (Ct. App.), cert. quashed, 113 N.M. 24, 822 P.2d 121 (1992).

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 trail court did not err in giving jury instructions that tracked the statute. State v. Simpson, 116 N.M. 768, 867 P.2d 1150 (1993).

UJI 14-252 does not shift burden to defendant. - The phrase "if you find," as used in UJI 14-252 with respect to negligence on the part of the victim, does not impermissibly shift the burden of proof to the defendant to prove his innocence. State v. Munoz, 1998-NMSC-041, 126 N.M. 371, 970 P.2d 143.

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, 105 N.M. 788, 737 P.2d 1165 (1987).

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.

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 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 (1999); State v. Santillanes, 2000-NMCA-017, 128 N.M. 752, 998 P.2d 1203, cert. denied, 128 N.M. 689, 997 P.2d 821 (2000).

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.

II. DOUBLE JEOPARDY.

Collateral estoppel inapplicable when defendant has no acquittal to raise. - The principle of collateral estoppel bars relitigation between the same parties of issues actually determined at a previous trial; in a criminal trial context collateral estoppel is a constitutional defense raised by the defendant in a second trial after an acquittal in the first trial on the same issue. Where the defendant was convicted in municipal court of violation of certain traffic ordinances, he had no acquittal to raise in his defense in district court on charges of homicide by vehicle, and application of the principle of collateral estoppel was therefore inappropriate. State v. Tanton, 88 N.M. 333, 540 P.2d 813 (1975).

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 66-8-102 NMSA 1978 or 64-22-3, 1953 Comp. (similar to 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, 88 N.M. 333, 540 P.2d 813 (1975).

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, 107 N.M. 152, 754 P.2d 529 (Ct. App. 1988).

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. Wiberg, 107 N.M. 152, 754 P.2d 529 (Ct. App. 1988); State v. Santillanes, 2000-NMCA-017, 128 N.M. 752, 998 P.2d 1203, cert. denied, 128 N.M. 689, 997 P.2d 821 (2000).

Passing in no-passing zone. - Section 64-18-14, 1953 Comp. (similar to 66-7-315 NMSA 1978), is not a lesser included offense of 64-22-1 or 64-22-3, 1953 Comp. (similar to this section and 66-8-113 NMSA 1978 respectively). State v. Villa, 85 N.M. 537, 514 P.2d 56 (Ct. App. 1973).

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, 85 N.M. 208, 510 P.2d 1079 (Ct. App. 1973).

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.

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, cert. denied, 128 N.M. 689, 997 P.2d 821 (2000).

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, 88 N.M. 333, 540 P.2d 813 (1975).

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, 93 N.M. 346, 600 P.2d 292 (Ct. App.), cert. quashed, 92 N.M. 532, 591 P.2d 286 (1979).

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, 100 N.M. 621, 674 P.2d 511 (1983), cert. denied, 471 U.S. 1057, 105 S. Ct. 2123, 85 L. Ed. 2d 487, rehearing denied, 472 U.S. 1013, 105 S. Ct. 2715, 86 L. Ed. 2d 729 (1985).

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, 113 N.M. 25, 822 P.2d 122 (Ct. App.), cert. quashed, 113 N.M. 24, 822 P.2d 121 (1992).

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, 105 N.M. 498, 734 P.2d 278 (Ct. App. 1987).

III. RECKLESS OR INTOXICATED.

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, 64 N.M. 55, 323 P.2d 1096 (1958).

As is inadvertently allowing automobile to encroach in wrong lane. - 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, 58 N.M. 205, 269 P.2d 751 (1954).

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, 87 N.M. 437, 535 P.2d 644 (Ct. App.), cert. denied, 87 N.M. 450, 535 P.2d 657 (1975).

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, 88 N.M. 267, 539 P.2d 1029 (Ct. App. 1975).

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, 94 N.M. 780, 617 P.2d 169 (Ct. App. 1980).

Admission of blood test results found not to be error. - See State v. Sanchez, 98 N.M. 781, 652 P.2d 1232 (Ct. App. 1982).

Evidence supported finding that defendant was under the influence at time of accident. State v. Copeland, 105 N.M. 27, 727 P.2d 1342 (Ct. App. 1986).

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, 102 N.M. 274, 694 P.2d 922 (1985).

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 [Articles 1 to 8 of Chapter 66, except 66-7-102.1 NMSA 1978] shall not per se be a basis for violation of Section 66-8-113 NMSA 1978.

History: 1978 Comp., § 66-8-101.1, enacted by 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, 105 N.M. 498, 734 P.2d 278 (Ct. App. 1987).

66-8-102. Persons under the influence of intoxicating liquor or drugs; aggravated driving while under the influence of intoxicating liquor or drugs; penalty.

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

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

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

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

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

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

(3) refused 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, was under the influence of intoxicating liquor or drugs.

E. A person under first conviction pursuant to this section shall be punished, notwithstanding the provisions of Section 31-18-13 NMSA 1978, by imprisonment for not more than ninety days or by a fine of not more than five hundred dollars ($500), or both; provided that if the sentence is suspended in whole or in part or deferred, the period of probation may extend beyond ninety days but shall not exceed one year. Upon a first conviction pursuant to this section, an offender may be sentenced to not less than forty-eight hours of community service or a fine of three hundred dollars ($300). The offender shall be ordered by the court to participate in and complete a screening

program described in Subsection H of this section and to attend a driver rehabilitation program for alcohol or drugs, also known as a "DWI school", approved by the bureau and also may be required to participate in other rehabilitative services as the court shall determine to be necessary. In addition to those penalties, when an offender commits aggravated driving while under the influence of intoxicating liquor or drugs, the offender shall be sentenced to not less than forty-eight consecutive hours in jail. If an offender fails to complete, within a time specified by the court, any community service, screening program, treatment program or DWI school ordered by the court, the offender shall be sentenced to not less than an additional forty-eight consecutive hours in jail. Any jail sentence imposed pursuant to this subsection for failure to complete, within a time specified by the court, any community service, screening program, treatment program or DWI school ordered by the court or for aggravated driving while under the influence of intoxicating liquor or drugs shall not be suspended, deferred or taken under advisement. On a first conviction pursuant to this section, any time spent in jail for the offense prior to the conviction for that offense shall be credited to any term of imprisonment fixed by the court. A deferred sentence pursuant to this subsection shall be considered a first conviction for the purpose of determining subsequent convictions.

F. A second or third conviction pursuant to this section shall be punished, notwithstanding the provisions of Section 31-18-13 NMSA 1978, by imprisonment for not more than three hundred sixty-four days or by a fine of not more than one thousand dollars ($1,000), or both; provided that if the sentence is suspended in whole or in part, the period of probation may extend beyond one year 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 seventy-two consecutive hours, forty-eight hours of community service and a fine of five hundred dollars ($500). In addition to those penalties, when an offender commits aggravated driving while under the influence of intoxicating liquor or drugs, the offender shall be sentenced to a jail term of not less than ninety-six consecutive hours. If an offender fails to complete, within a time specified by the court, any community service, screening program or treatment program ordered by the court, the offender shall be sentenced to not less than an additional seven consecutive days in jail. A penalty imposed pursuant to this paragraph shall not be suspended or deferred or taken under advisement; and

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

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

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

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

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

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

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

M. A conviction pursuant to a municipal or county ordinance in New Mexico or a law of any other jurisdiction, territory or possession of the United States or of a tribe, where

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

N. In addition to any other fine or fee 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.

O. As used in this section:

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

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

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.

ANNOTATIONS

I. General Consideration.
II. Procedure and Jurisdiction.
A. Procedure.
B. Jurisdiction.
III. Evidence.
IV. Sentence.

I. GENERAL CONSIDERATION.

Cross references. - For definitions of "conviction" and "convicted," see 66-5-28 NMSA 1978.

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 et seq.

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 a minor's operation of a motor vehicle while possessing liquor, see 66-8-138 to 66-8-140 NMSA 1978.

For operating snowmobiles while under the influence, see 66-9-8 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.

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.

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 1993 amendment, effective January 1, 1994, rewrote this section to the extent that a detailed comparison is impracticable.

The 1997 amendments. - Identical amendments to this section were enacted by Laws 1997, ch. 43, § 1, effective July 1, 1997, and Laws 1997, ch. 205, § 1, which 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). Laws 1997, ch. 205 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

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 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.

2003 amendments. - Laws 2003, ch. 164, § 10, effective July 1, 2003, substituting "A person" for "Every person" at the beginning of Subsection E; and substituting "or of a tribe, where that ordinance or law" for "that" following "the United States" in Subsection M was approved April 5, 2003, effective July 1, 2003.

However, this section was also amended by Laws 2003, ch. 51, § 10, effective March 19, 2003, and by Laws 2003, ch. 90, § 3, effective March 28, 2003.

Laws 2003, ch. 51, § 10, substituted "A" for "Every" at the beginnning of Subsection E; rewrote Subsection C to limit Paragraph (1) to persons twenty-one years of age or more and to add a new Paragraph (2) as follows:

"C. It is unlawful for:

"(1) a person twenty-one years of age or more who has an alcohol concentration in his blood or breath of eight one hundredths or more to drive a vehicle within this state; and

"(2) a person who has an alcohol concentration in his blood or breath of four one hundredths or more to drive a commercial motor vehicle"; and changed "each offender" to "an offender" at the beginning of Subsection F, Paragraph (1).

Laws 2003, ch. 90, § 3, rewrote Subsection C as follows:

"C. It is unlawful for:

"(1) a person who has an alcohol concentration of eight one hundredths or more in his blood or breath to drive a vehicle within this state; and

"(2) 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."

Laws 2003, ch. 90, § 3 also changed "Every" to "A" at the beginning of Subsection E; amended Subsection F, Paragraph (1) to increase the number of hours of the sentence upon a second conviction from 72 to 96 hours; amended Subsection G to limit its applicability to a fourth conviction and increase the sentence from 6 months to 18 months; added new Subsections H, I and J; amended former Subsection H to provide for approval of screening programs by the department of finance and administration;

and added new Subsections L and M. Subsections G, H, I, J, K, L and M of ch. 90 read as follows:

"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 or 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 or subsequent 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 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.

"L. 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, not less than a twenty-eight-day inpatient, residential or in-custody substance abuse treatment program approved by the court, not less than a ninety-day outpatient treatment program approved by the court or a drug court program approved by the court. The requirement imposed pursuant to this subsection shall not be suspended, deferred or taken under advisement.

"M. Upon a felony conviction pursuant to this section, the corrections department shall provide substance abuse counseling and treatment to the offender."

Former Subsections I through O were redesignated as Subsections N through T.

Section 66-8-102 is set out in full as amended by Laws 2003, ch. 164, § 10. See Section 12-1-8 NMSA 1978.

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, 119 N.M. 598, 893 P.2d 494 (Ct. App. 1995).

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, 119 N.M. 598, 893 P.2d 494 (Ct. App. 1995).

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.

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; 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).

Title of act governs scope of this section and limits it to driving or being in actual physical control of a vehicle upon the public highways of this state. 1953-54 Op. Att'y Gen. No. 5858.

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.

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, 113 N.M. 25, 822 P.2d 122 (Ct. App.), cert. quashed, 113 N.M. 24, 822 P.2d 121 (1992).

Double jeopardy does not bar DWI prosecution after license revocation. - An administrative driver's license revocation under the Implied Consent Act (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, 120 N.M. 619, 904 P.2d 1044 (1995).

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; 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).

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, 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 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 (2001).

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, 113 N.M. 25, 822 P.2d 122 (Ct. App.), cert. quashed, 113 N.M. 24, 822 P.2d 121 (1992).

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, 66 N.M. 175, 344 P.2d 481 (1959); State v. Sisneros, 42 N.M. 500, 82 P.2d 274 (1938).

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; therefore, where three different types of tests were conducted following defendant's arrest to determine his degree of intoxication which revealed .05%, .10% and .12% alcohol in the defendant's blood, respectively, then the evidence was sufficient to show defendant was under the influence of intoxicating liquor. State v. Myers, 88 N.M. 16, 536 P.2d 280 (Ct. App. 1975).

"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, 85 N.M. 72, 509 P.2d 264 (Ct. App. 1973).

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, 105 N.M. 223, 731 P.2d 366 (1986).

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, 113 N.M. 740, 832 P.2d 801 (Ct. App. 1992).

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.

"Vehicle" includes moped. - A "moped," as defined in 66-1-4.11F NMSA 1978 and regulated by 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 (2001).

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, 115 N.M. 73, 846 P.2d 1082 (Ct. App. 1992).

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, 98 N.M. 616, 651 P.2d 1260 (1982).

The 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.

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., 95 N.M. 773, 626 P.2d 310 (Ct. App. 1981).

Only killings involving violation of this section or 66-8-113 NMSA 1978 were declared felonies prior to the 1989 amendment to 66-8-101 NMSA 1978, with punishment under 66-8-9 NMSA 1978; other killings, not declared to be felonies, were misdemeanors with punishment under 66-8-7B NMSA 1978. State v. Barela, 95 N.M. 349, 622 P.2d 254 (Ct. App. 1980), overruled on other grounds, State v. Yazzie, 116 N.M. 83, 860 P.2d 213 (Ct. App. 1993).

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, 107 N.M. 536, 760 P.2d 1302 (Ct. App.), cert. denied, 107 N.M. 413, 759 P.2d 200 (1988).

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, 101 N.M. 399, 683 P.2d 516 (Ct. App. 1984).

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, 106 N.M. 708, 749 P.2d 93 (1988).

Right to jury trial. - 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 (1999).

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.

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 (2001).

Use of convictions under prior statute to enhance sentence. - The term "under this section" in Subsection E did not limit the state's use of convictions for driving under the influence (DWI) under the prior version of the statute in seeking to enhance a charge of DWI pursuant to the 1993 amendment of this section. State v. Hall, 119 N.M. 707, 895 P.2d 229 (Ct. App. 1995).

Enhancement of the defendant's sentence for driving under the influence (DWI) based on convictions under a prior version of the statute neither constituted an ex post facto application of this section, as amended in 1993, nor a denial of the defendant's due process rights. State v. Hall, 119 N.M. 707, 895 P.2d 229 (Ct. App. 1995).

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.

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 (2000).

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, N.M. , 62 P.3d 372, cert. denied, N.M. , 63 P.3d 516 (2003).

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 under Subsection E. However, when the defendant was convicted for three prior violations of a municipal ordinance, the mandatory six-month jail term for fourth offenders set forth in Subsection E(2) did not necessarily apply, as the language is unclear as to whether Subsection E(2) encompasses municipal ordinance convictions. State v. Russell, 113 N.M. 121, 823 P.2d 921 (Ct. App. 1991).

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.

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, " '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, 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.

II. PROCEDURE AND JURISDICTION.

A. PROCEDURE.

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. MIC, 48 N.M. 9, 144 P.2d 676 (1944); State v. Sisneros, 42 N.M. 500, 82 P.2d 274 (1938).

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, 107 N.M. 152, 754 P.2d 529 (Ct. App. 1988); State v. Santillanes, 2000-NMCA-017, 128 N.M. 752, 998 P.2d 1203, cert. denied, 128 N.M. 689, 997 P.2d 821 (2000).

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 64-22-3, 1953 Comp. (similar to 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, 88 N.M. 333, 540 P.2d 813 (1975).

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, 88 N.M. 333, 540 P.2d 813 (1975).

Collateral estoppel inapplicable when defendant has no acquittal to raise. - The principle of collateral estoppel bars relitigation between the same parties of issues actually determined at a previous trial; in a criminal trial context collateral estoppel is a constitutional defense raised by the defendant in a second trial after an acquittal in the first trial on the same issue. Where the defendant was convicted in municipal court of violation of certain traffic ordinances, he had no acquittal to raise in his defense in district court on charges of homicide by vehicle, and application of the principle of collateral estoppel was therefore inappropriate. State v. Tanton, 88 N.M. 333, 540 P.2d 813 (1975).

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. Castaeda, 2001-NMCA-052, 130 N.M. 679, 30 P.3d 368.

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.

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.

Supervised probation not to exceed maximum allowable sentence. - When a defendant is placed on probation under Subsection E for a period in excess of the one-

year maximum imprisonment authorized by that subsection, the probation period in excess of one year cannot be supervised, even though the subsection authorizes a probationary period (not specifying whether supervised or unsupervised) of up to five years, since 31-20-6D NMSA 1978 forbids supervised probation for periods in excess of the maximum sentence prescribed by law for a crime. State v. Vigil, 103 N.M. 581, 711 P.2d 26 (Ct. App. 1985).

Intoxication stupor not defense to involuntary manslaughter. - Fact that a drunken man driving his car on a public highway has been so changed or affected by his intoxication that he is unable to reason and foresee the result of his illegal acts is not a defense to the charge of involuntary manslaughter. State v. Alls, 55 N.M. 168, 228 P.2d 952 (1951).

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, 55 N.M. 168, 228 P.2d 952 (1951).

Right to preliminary hearing. - An accused has no right to a preliminary hearing on a misdemeanor charge of driving while intoxicated. State v. Greyeyes, 105 N.M. 549, 734 P.2d 789 (Ct. App. 1987).

Method for establishing applicable determinate sentence. - Subsection E, which provides that where the conviction is for a second or subsequent DWI, the offense is punishable by imprisonment for not less than ninety days nor more than one year, does not control over § 31-18-13B NMSA 1978, which provides the method for establishing the applicable determinate sentence for offenses not contained in the Criminal Code. State v. Greyeyes, 105 N.M. 549, 734 P.2d 789 (Ct. App. 1987).

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, and because fourth and subsequent offenders are felons, who are also granted such credit pursuant to 31-20-12 NMSA 1978, 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, 108 N.M. 709, 778 P.2d 456 (Ct. App. 1989).

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.

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.

B. JURISDICTION.

Municipality may enact a drunken driving ordinance notwithstanding that state statute covers same subject matter and provides penalty for violations. Mares v. Kool, 51 N.M. 36, 177 P.2d 532 (1946).

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.

Section is valid grant of concurrent first offense jurisdiction. - This section is a valid, specific grant of concurrent jurisdiction to justices of the peace (now magistrates) in cases involving driving while under the influence of intoxicating liquor or of drugs, when the same is a first offense, notwithstanding the jurisdictional limitations of 36-2-5, 1953 Comp. (now repealed). State v. Rue, 72 N.M. 212, 382 P.2d 697 (1963)For present, similar provision, see 35-3-4 NMSA 1978.

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 County v. Montoya, 108 N.M. 361, 772 P.2d 891 (Ct. App. 1989).

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 Subsection C 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.

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, 78 N.M. 512, 433 P.2d 229 (Ct. App. 1967).

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, 78 N.M. 512, 433 P.2d 229 (Ct. App. 1967).

Section subject to assimilation under federal law. - The offenses described by 66-5-39 NMSA 1978 (driving while license suspended), this section (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).

III. EVIDENCE.

Odor of liquor, standing alone, does not of itself prove intoxication. Sellers v. Skarda, 71 N.M. 383, 378 P.2d 617 (1963).

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, 81 N.M. 693, 472 P.2d 658 (Ct. App.), cert. denied, 81 N.M. 721, 472 P.2d 984 (1970).

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, 81 N.M. 693, 472 P.2d 658 (Ct. App.), cert. denied, 81 N.M. 721, 472 P.2d 984 (1970).

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, 42 N.M. 500, 82 P.2d 274 (1938).

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, 85 N.M. 72, 509 P.2d 264 (Ct. App. 1973).

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, 67 N.M. 308, 355 P.2d 126 (1960).

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, 34 N.M. 458, 283 P. 907 (1929).

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, 81 N.M. 693, 472 P.2d 658 (Ct. App.), cert. denied, 81 N.M. 721, 472 P.2d 984 (1970).

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, 116 N.M. 832, 867 P.2d 1214 (Ct. App. 1993).

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, 96 N.M. 313, 629 P.2d 1242 (Ct. App. 1981).

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 (1999).

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, 117 N.M. 241, 871 P.2d 5 (Ct. App. 1994).

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.

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 (2002).

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, 115 N.M. 73, 846 P.2d 1082 (Ct. App. 1992); 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 (1999).

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.

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, 105 N.M. 549, 734 P.2d 789 (Ct. App. 1987); State v. Luna, 93 N.M. 773, 606 P.2d 183 (1980).

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, 117 N.M. 241, 871 P.2d 5 (Ct. App. 1994).

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, N.M. , 64 P.3d 495.

Evidence supported finding that defendant was under the influence at time of accident. State v. Copeland, 105 N.M. 27, 727 P.2d 1342 (Ct. App. 1986).

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, 104 N.M. 561, 724 P.2d 769 (Ct. App.), cert. dismissed, 104 N.M. 522, 724 P.2d 231 (1986).

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.

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.

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 (1998).

IV. SENTENCE.

Electronic monitoring system. - Felony DWI defendants may be sentenced to a "jail term", pursuant to Subsection G, 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, N.M. , 61 P.3d 835 (2002).

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 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: 1978 Comp., § 66-8-102.1, enacted by Laws 1982, ch. 102, § 2; 1984, ch. 72, § 4; 1993, ch. 66, § 8; 2003, ch. 51, § 11; 2003, ch. 90, § 4.

ANNOTATIONS

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.

2003 amendments. - Identical amendments to this section were enacted by Laws 2003, ch. 51, § 11, effective March 19, 2003, and Laws 2003, ch. 90, § 4, effective

March 28, 2003, adding the Subsection A designation and adding Subsection B. The section is set out as amended by Laws 2003, ch. 90, § 4. See 12-1-8 NMSA 1978.

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; creating a fund.

A. A fee is imposed on all persons who provide ignition interlock devices to a person convicted of driving while under the influence of intoxicating liquor or drugs pursuant to Section 66-8-102 NMSA 1978 or a person whose driver's license is revoked pursuant to the provisions of the Implied Consent Act, in the amount of ten percent of the amount charged to lease, install, service and remove each ignition interlock device for a person convicted pursuant to Section 66-8-102 NMSA 1978 or whose driver's license is revoked pursuant to the provisions of the Implied Consent Act [66-8-105 to 66-8-112 NMSA 1978] and shall be paid monthly to the local government division of the department of finance and administration.

B. The "interlock device fund" is created in the state treasury. The fee imposed pursuant to Subsection A of this section shall be distributed to the fund by the local government division of the department of finance and administration.

C. All money in the interlock device fund is appropriated to the local government division of the department of finance and administration to cover the costs of installing, leasing for the initial four months and removing ignition interlock devices for indigent people who are required, pursuant to convictions under Section 66-8-102 NMSA 1978 or driver's license revocations pursuant to the provisions of the Implied Consent Act [66-8-105 to 66-8-112 NMSA 1978], to install those devices in their vehicles. Indigency shall be determined by the sentencing court.

D. Any balance remaining in the interlock device fund shall not revert to the general fund at the end of any fiscal year.

E. The interlock device fund shall be administered by the local government division of the department of finance and administration.

History: Laws 2002, ch. 82, § 2; 2003, ch. 92, § 1.

ANNOTATIONS

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".

Cross references. - For Ignition Interlock Licensing Act, see 66-5-501 NMSA 1978 et seq.

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 v. Rogers, 91 N.M. 768, 581 P.2d 456 (1978).

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 v. Rogers, 91 N.M. 768, 581 P.2d 456 (1978).

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, 107 N.M. 152, 754 P.2d 529 (Ct. App. 1988).

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, 85 N.M. 208, 510 P.2d 1079 (Ct. App. 1973).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 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.

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, 99 N.M. 29, 653 P.2d 860 (1982); State v. Copeland, 105 N.M. 27, 727 P.2d 1342 (Ct. App. 1986).

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. State v. Suazo, 117 N.M. 785, 877 P.2d 1088 (1994)(see case for text of test).

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, 108 N.M. 778, 779 P.2d 556 (Ct. App. 1989).

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, 113 N.M. 732, 832 P.2d 793 (Ct. App. 1992).

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 repeals 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 1987 Replacement Pamphlet. 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.

Implied consent violates neither due process nor equal protection. - Implied Consent Act (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. Commissioner of Motor Vehicles v. McCain, 84 N.M. 657, 506 P.2d 1204 (1973).

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, 120 N.M. 619, 904 P.2d 1044 (1995).

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, 87 N.M. 437, 535 P.2d 644 (Ct. App.), cert. denied, 87 N.M. 450, 535 P.2d 657 (1975).

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. State v. Suazo, 117 N.M. 785, 877 P.2d 1088 (1994)(see case for text of test).

Lawful arrest is the 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 alcoholic test taken without his consent and while he was not under arrest under the Implied Consent Act (66-8-105 to 66-8-112 NMSA 1978). State v. Richerson, 87 N.M. 437, 535 P.2d 644 (Ct. App.), cert. denied, 87 N.M. 450, 535 P.2d 657 (1975).

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, 111 N.M. 727, 809 P.2d 641 (Ct. App. 1991), overruled in part on other grounds, 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, 120 N.M. 29, 897 P.2d 216 (Ct. App. 1995).

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, 120 N.M. 29, 897 P.2d 216 (Ct. App. 1995).

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, 120 N.M. 29, 897 P.2d 216 (Ct. App. 1995).

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, 108 N.M. 140, 767 P.2d 379 (Ct. App. 1988).

Right not to be forcibly tested after refusal. - The right granted by the legislature in 66-8-111A NMSA 1978 is merely the right not to be forcibly tested after manifesting refusal. McKay v. Davis, 99 N.M. 29, 653 P.2d 860 (1982).

Multiple testing permitted. - The Implied Consent Act, 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.

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.

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 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 (2002).

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 (2002).

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, 120 N.M. 29, 897 P.2d 216 (Ct. App. 1995).

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 (1998).

Sections read in conjunction. - The implied consent given by 64-22-2.6, 1953 Comp. (similar to this section), must be read in conjunction with 64-22-2.11A, 1953 Comp. (similar to 66-8-111A NMSA 1978). State v. Wilson, 92 N.M. 54, 582 P.2d 826 (Ct. App. 1978).

Blood sample taken in violation of statutory right must be suppressed. State v. Wilson, 92 N.M. 54, 582 P.2d 826 (Ct. App. 1978)(decided under former law).

City ordinance prohibiting driving while intoxicated does not conflict with the provisions of the Implied Consent Act (66-8-105 to 66-8-112 NMSA 1978). City of Hobbs v. Sparks, 85 N.M. 277, 511 P.2d 763 (Ct. App.), cert. denied, 85 N.M. 265, 511 P.2d 751 (1973).

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, 85 N.M. 208, 510 P.2d 1079 (Ct. App. 1973).

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, 108 N.M. 140, 767 P.2d 379 (Ct. App. 1988).

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.

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, 88 N.M. 16, 536 P.2d 280 (Ct. App. 1975).

Neither Subsection B of 64-22-2.9, 1953 Comp. (repealed, but similar to this section) nor the constitution requires that defendant be told that he has the right to an additional breath test. City of Farmington v. Joseph, 91 N.M. 414, 575 P.2d 104 (Ct. App. 1978).

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, 88 N.M. 16, 536 P.2d 280 (Ct. App. 1975).

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, 88 N.M. 16, 536 P.2d 280 (Ct. App. 1975).

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, 101 N.M. 399, 683 P.2d 516 (Ct. App. 1984).

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 [66-8-105 to 66-8-112 NMSA 1978] 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 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 [66-8-105 to 66-8-112 NMSA 1978].

E. 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.

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 driving a motor vehicle while under the influence of intoxicating liquor, the trial judge shall be required to 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.

ANNOTATIONS

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.

2003 amendments. - Identical amendments to this section were enacted by Laws 2003, ch. 51, § 12, effective March 19, 2003, and Laws 2003, ch. 90, § 5, effective March 28, 2003, substituting "less than four one hundredths" for "five one-hundredths or less" in Paragraph B(1); substituting "at least four one hundredths" for "more than five one-hundredths" in Paragraph B(2); adding designations to Subparagraphs B(2)(a) and (b); substituting "unless the person is driving a commercial motor vehicle; and" for "However" at the end of Subparagraph B(2)(a); adding Paragraph B(3); and rewriting Subsection C. The section is set out as amended by Laws 2003, ch. 90, § 5. See 12-1-8 NMSA 1978.

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, 94 N.M. 780, 617 P.2d 169 (Ct. App. 1980).

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, 94 N.M. 780, 617 P.2d 169 (Ct. App. 1980).

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 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 his 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 his request, the person refused to submit to a chemical test after being advised that failure to submit could result in revocation of his 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) ninety days or until all conditions for license reinstatement are met, whichever is later, if the person is twenty-one years of age or older;

(2) six months or until all conditions for license reinstatement are met, whichever is later, if the person is less than twenty-one years of age and has not previously had his license revoked pursuant to the provisions of this section, 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) or (2) of this subsection or any provision of the Children's Code.

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.". 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.

ANNOTATIONS

Cross references. - For mandatory revocation of driver's license, see 66-5-29 NMSA 1978.

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.

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.

2003 amendments. - Identical amendments to this section were enacted by Laws 2003, ch. 51, § 13, effective March 19, 2003, and Laws 2003, ch. 90, § 6, effective March 28, 2003, in Subsection C, substituting "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"; inserting "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 deleting "in the person's blood or breath" preceding "if the person". This section is set out as amended by Laws 2003, ch. 90, § 6. See 12-1-8 NMSA 1978].

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, 119 N.M. 598, 893 P.2d 494 (Ct. App. 1995).

Provision not limited to public highways. - Section 64-22-2.11, 1953 Comp. (similar to this section), as amended in 1971, was not limited in application to public highways, streets and thoroughfares. Commissioner of Motor Vehicles v. McCain, 84 N.M. 657, 506 P.2d 1204 (1973).

Sections read in conjunction. - The implied consent given by 64-22-2.6, 1953 Comp. (similar to 66-8-107 NMSA 1978), must be read in conjunction with 64-22-2.11 A, 1953 Comp. (similar to Subsection A of this section). State v. Wilson, 92 N.M. 54, 582 P.2d 826 (Ct. App. 1978)(decided under former law).

Blood sample taken in violation of statutory right must be suppressed. State v. Wilson, 92 N.M. 54, 582 P.2d 826 (Ct. App. 1978)(decided under former law).

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, 99 N.M. 29, 653 P.2d 860 (1982).

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, 99 N.M. 29, 653 P.2d 860 (1982).

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.

Implied Consent Act does not limit the number of permissible tests to one, or any other number. State v. Copeland, 105 N.M. 27, 727 P.2d 1342 (Ct. App. 1986).

Chemical test administrable over driver's objections. - Under the former law, a driver charged with vehicular homicide could refuse to submit to a blood test to determine the alcohol content, even though a valid search warrant had been issued for that purpose, and no test could then be administered; however, this section has been modified in 1979 to permit a chemical test, over the driver's objections, pursuant to a search warrant or where there is "probable cause to believe that the driver has committed a felony while under the influence of alcohol or a controlled substance." State v. Steele, 93 N.M. 470, 601 P.2d 440 (Ct. App. 1979).

Evidence of a defendant's refusal to take a breath-alcohol test is admissible under the Implied Consent Act. McKay v. Davis, 99 N.M. 29, 653 P.2d 860 (1982).

Officer need only have reasonable grounds to believe driver intoxicated. - Section 64-22-2.11, 1953 Comp. (similar to this 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. Commissioner of Motor Vehicles v. McCain, 84 N.M. 657, 506 P.2d 1204 (1973).

Affidavit for search warrant. - An officer's affidavit, stating the 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.

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.

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.

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, 112 N.M. 615, 817 P.2d 1257 (Ct. App. 1991).

Necessity of notarization of statement. - The department was divested of jurisdiction to revoke a license by the failure of the arresting officer to have his statement either notarized or signed under penalty of perjury. State Transp. Dep't v. Herman, 106 N.M. 138, 740 P.2d 132 (Ct. App. 1987).

Where the arresting officer's affidavit was not notarized but he testified under oath at the administrative hearing, it was held that the statutory requirement in Subsection C of a sworn statement is mandatory and jurisdictional, that holding that an officer's later testimony may replace the statement required by Subsection C would, in effect, amend the statute to delete "signed under penalty of perjury", and that therefore the motor vehicle department lacked jurisdiction to institute revocation proceedings. Stephens v. State, Transp. Dep't, 106 N.M. 198, 740 P.2d 1182 (Ct. App. 1987).

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. Commissioner of Motor Vehicles v. McCain, 84 N.M. 657, 506 P.2d 1204 (1973).

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, 74 N.M. 559, 395 P.2d 908 (1964).

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. 72-1.

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. State v. Suazo, 117 N.M. 785, 877 P.2d 1088 (1994)(see case for text of test).

Evidence of refusal may be excluded in prosecution for driving while intoxicated. - In a prosecution for driving while intoxicated contrary to 66-8-102 NMSA 1978, 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, 96 N.M. 313, 629 P.2d 1242 (Ct. App. 1981).

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, 117 N.M. 794, 877 P.2d 1097 (Ct. App. 1993), aff'd in part, 117 N.M. 785, 877 P.2d 1088 (1994).

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, 106 N.M. 657, 748 P.2d 30 (Ct. App. 1987).

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 Paragraph C(3) of this section. Medrow v. State Taxation & Revenue Dep't, 1998-NMCA-173, 126 N.M. 332, 968 P.2d 1195.

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.

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 on a person who refuses to permit chemical testing or on a person who submits to a chemical test the results of which indicate 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. Upon serving notice of revocation, the law enforcement officer shall take the license or permit of the driver, if any, and issue 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 department issues the order following that hearing; provided that a temporary license shall not be issued to a driver without a valid license or permit. The law enforcement officer shall send the person's driver's license to the department along with 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.

ANNOTATIONS

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".

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.

2003 amendments. - Identical amendments to this section were enacted by Laws 2003, ch. 51, § 14, effective March 19, 2003, and Laws 2003, ch. 90, § 7, effective March 28, 2003, in the first sentence, inserting "in the person's blood or breath" following "an alcohol concentration", deleting "in the person's blood or breath" following "one hundredths or more", substituting "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 substituting "a temporary license shall not" for "no temporary license shall" following "hearing; provided that". This section is set out as amended by Laws 2003, ch. 90, § 7. See 12-1-8 NMSA 1978.

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 this section, the date that the department 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 regulations 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 his parent, guardian or custodian by the department. A date for the hearing shall be set by the department, 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 department 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 the department extends the validity of the temporary license for the period of the postponement or continuation.

D. At the hearing, the department or its agent 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 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 department shall enter an order sustaining the revocation or denial of the person's license or privilege to drive if the department 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 him that his failure to submit to the test could result in the revocation of his 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 department, the person's license shall not be revoked.

H. A person adversely affected by an order of the department 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 his hearing forwarded by the department to his 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.

ANNOTATIONS

Cross references. - For notice by the division generally, see 66-2-11 NMSA 1978.

For subpoenas generally, see Rule 1-045 NMRA.

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.

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.

2003 amendments. - Identical amendments to this section were enacted by Laws 2003, ch. 51, § 15, effective March 19, 2003, and Laws 2003, ch. 90, § 8, effective March 28, 2003, inserting "driver's" preceding "license or privilege" in Subsection A; adding "or drugs" at the end of Paragraph E(1); adding "whether:" at the beginning of Paragraphs E(4) and (5); deleting "whether" at the beginning of Subparagraphs E(4)(a), (b), and (5)(a); rewriting Subparagraph E(5)(b); substituting "drugs" for "drug" at the end of Paragraph F(1); adding "either:" in Paragraph E(4); adding designations Subparagraph E(4)(a) and (b); deleting "either" near the beginning of Subparagraph E(4)(a); in Subparagraph E(5)(b), inserting "in the person's blood or breath" following "an alcohol concentration", substituting "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"; adding the Subsection G designation and redesignating former Subsections G and H as present Subsections H and I; and substituting "Subsection F of this section" for "this Subsection" in present Subsection G. This section is set out as amended by Laws 2003, ch. 90, § 8. See 12-1-8 NMSA 1978.

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, 119 N.M. 598, 893 P.2d 494 (Ct. App. 1995).

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, 120 N.M. 619, 904 P.2d 1044 (1995).

Applicability of Miranda requirements. - In general, Miranda requirements are inapplicable to driver's license forfeiture proceedings, since such a proceeding is civil in nature, but this only applies to noncustodial interrogation and does not imply that statements made in custodial situations, in violation of constitutionally protected rights, are admissible in civil proceedings. Fifth amendment rights are retained in civil forfeiture proceeding. Armijo v. State ex rel. Transportation Dep't, 105 N.M. 771, 737 P.2d 552 (Ct. App. 1987).

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, 105 N.M. 771, 737 P.2d 552 (Ct. App. 1987).

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., 120 N.M. 229, 900 P.2d 978 (Ct. App. 1995).

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., 120 N.M. 229, 900 P.2d 978 (Ct. App. 1995).

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.

This section indicates a legislative intent that license revocation hearings be held "no later than ninety days after notice of revocation". The clear purpose of this requirement is to promptly remove dangerous drivers from the state's highways for the protection of the general public. Weber v. DMV, 112 N.M. 697, 818 P.2d 1221 (Ct. App. 1991),

overruled on other grounds, State Taxation & Revenue Dep't v. Bargas, 129 N.M. 800, 14 P.3d 538 (Ct. App. 2000).

The requirement that the revocation hearing be held within 90 days is mandatory. Weber v. DMV, 112 N.M. 697, 818 P.2d 1221 (Ct. App. 1991), overruled on other grounds, State Taxation & Revenue Dep't v. Bargas, 129 N.M. 800, 14 P.3d 538 (Ct. App. 2000).

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. Weber v. DMV, 112 N.M. 697, 818 P.2d 1221 (Ct. App. 1991), overruled on other grounds, State Taxation & Revenue Dep't v. Bargas, 129 N.M. 800, 14 P.3d 538 (Ct. App. 2000).

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.

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.

The term "reasonable grounds" refers to portions of 64-22-2.11 and 64-22-2.12, 1953 Comp. (similar to 66-8-111 NMSA 1978 and this section, respectively), of the act, in which four grounds for revocation are enumerated: (1) the law enforcement officer must have had reasonable grounds to believe that the person was driving or in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor; (2) the person must have been under arrest; (3) the person must have refused to submit to a chemical test upon request of the law enforcement officer; and (4) the law enforcement officer must have advised that the failure to submit to a test could result in revocation of his privilege to drive. State, Dep't of Motor Vehicles v. Gober, 85 N.M. 457, 513 P.2d 391 (1973).

Notarization of officer's statement is mandatory. - The department was divested of jurisdiction to revoke a license by the failure of the arresting officer to have his statement either notarized or signed under penalty of perjury. State Transp. Dep't v. Herman, 106 N.M. 138, 740 P.2d 132 (Ct. App. 1987).

Where the arresting officer's affidavit was not notarized but he testified under oath at the administrative hearing, it was held that the statutory requirement in § 66-8-111C of a sworn statement is mandatory and jurisdictional, that holding that an officer's later testimony may replace the statement required by § 66-8-111C would, in effect, amend the statute to delete "signed under penalty of perjury", and that therefore the motor

vehicle department lacked jurisdiction to institute revocation proceedings. Stephens v. State, Transp. Dep't, 106 N.M. 198, 740 P.2d 1182 (Ct. App. 1987).

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 a preponderance of the evidence is sufficient to prove existence of reasonable grounds. State, Dep't of Motor Vehicles v. Gober, 85 N.M. 457, 513 P.2d 391 (1973).

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. Weber v. DMV, 112 N.M. 697, 818 P.2d 1221 (Ct. App. 1991), overruled on other grounds, State Taxation & Revenue Dep't v. Bargas, 129 N.M. 800, 14 P.3d 538 (Ct. App. 2000).

Nature of hearing allowed by Subsection G. - The statutory language in Subsection G does not entitle a defendant to a hearing at which the parties are permitted an opportunity to be heard and to present their case. State, Transp. Dep't v. Yazzie, 112 N.M. 615, 817 P.2d 1257 (Ct. App. 1991).

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, 112 N.M. 615, 817 P.2d 1257 (Ct. App. 1991).

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, 120 N.M. 29, 897 P.2d 216 (Ct. App. 1995).

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. It is not a proper function of the courts to reweigh the evidence or to substitute its judgment for that of the hearing officer, so long as the administrative agency's decision is supported by the record. State v. Suazo, 117 N.M. 794, 877 P.2d 1097 (Ct. App. 1993), aff'd in part, 117 N.M. 785, 877 P.2d 1088 (1994).

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, 113 N.M. 696, 831 P.2d 995 (Ct. App. 1992).

A tape recording is an acceptable method of preserving record of administrative proceedings. State, Dep't of Motor Vehicles v. Gober, 85 N.M. 457, 513 P.2d 391 (1973).

Judicial hearing confined to administrative hearing's record. - Absent a specific statutory provision, the court is confined to the record made in an administrative proceeding and as 64-22-2.12, 1953 Comp. (similar to this section), does not expressly grant a trial de novo the hearing is to be confined to the record of the administrative proceedings. State, Dep't of Motor Vehicles v. Gober, 85 N.M. 457, 513 P.2d 391 (1973).

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

I. General Consideration.
II. Evidence.
A. In General.

B. Homicide by Vehicle.
C. Illustrations.

I. GENERAL CONSIDERATION.

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.

For snowmobile operations, see 66-9-8 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.

There is no such crime as homicide by vehicle by careless driving. State v. Yazzie, 116 N.M. 83, 860 P.2d 213 (Ct. App. 1993), overruled on other grounds, State v. Yarborough, 1996-NMSC-068, 122 N.M. 596, 930 P.2d 131 (1996).

Violation of reckless driving provision is negligence per se. Bell v. Carter Tobacco Co., 41 N.M. 513, 71 P.2d 683 (1937).

Only killings involving violation of 66-8-102 NMSA 1978 or this section were declared felonies prior to the 1989 amendment to 66-8-101 NMSA 1978, with punishment under 66-8-9 NMSA 1978; other killings, not declared to be felonies, were misdemeanors with punishment under 66-8-7B NMSA 1978. State v. Barela, 95 N.M. 349, 622 P.2d 254 (Ct. App. 1980), overruled on other grounds, State v. Yazzie, 116 N.M. 83, 860 P.2d 213 (Ct. App. 1993).

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, 88 N.M. 16, 536 P.2d 280 (Ct. App. 1975).

"Reckless" is state of mind of utter irresponsibility. - The factor which distinguishes negligence from heedlessness or reckless disregard is a particular state of mind. To be heedless or reckless, evidence must show that this particular state of mind is one of utter irresponsibility or conscious abandonment of any consideration for the safety of guest passengers. If the plaintiff cannot from the evidence, create at least an inference of this state of mind, negligence will remain negligence, and the guest statute (64-24-1, 1953 Comp., declared unconstitutional), will be an effective bar against a claim of damages. Here, the plea of guilty to reckless driving permits an inference to be drawn that defendant's state of mind was sufficient for liability under the guest statute and

motivated his conduct in operating the vehicle. Valencia v. Dixon, 83 N.M. 70, 488 P.2d 120 (Ct. App.), cert. denied, 83 N.M. 57, 488 P.2d 107 (1971).

Reckless driving is distinguished from drunken driving so that a conviction for one does not preclude prosecution for the other. Rea v. MIC, 48 N.M. 9, 144 P.2d 676 (1944); State v. Sisneros, 42 N.M. 500, 82 P.2d 274 (1938).

Passing within no-passing zone not lesser included offense. - Section 64-18-14, 1953 Comp. (similar to 66-7-315 NMSA 1978, no-passing zones), is not a lesser included offense of 64-22-1 or 66-22-3, 1953 Comp. (similar to 66-8-101 NMSA 1978 and this section, respectively), hence, conviction pursuant to 64-18-14, 1953 Comp., is impliedly an acquittal of homicide by vehicle. State v. Villa, 85 N.M. 537, 514 P.2d 56 (Ct. App. 1973).

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 66-8-102 NMSA 1978 or 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, 88 N.M. 333, 540 P.2d 813 (1975).

A conviction of reckless driving is not necessarily included in a conviction of vehicular homicide while driving under the influence. State v. Wiberg, 107 N.M. 152, 754 P.2d 529 (Ct. App. 1988).

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, 88 N.M. 333, 540 P.2d 813 (1975).

Section does not preempt child abuse statute under general/specific statute rule. - In a case involving convictions of abuse of a child under 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.

Collateral estoppel inapplicable when defendant has no acquittal to raise. - The principle of collateral estoppel bars relitigation between the same parties of issues actually determined at a previous trial; in a criminal trial context collateral estoppel is a constitutional defense raised by the defendant in a second trial after an acquittal in the

first trial on the same issue. Where the defendant was convicted in municipal court of violation of certain traffic ordinances, he had no acquittal to raise in his defense in district court on charges of homicide by vehicle, and application of the principle of collateral estoppel was therefore inappropriate. State v. Tanton, 88 N.M. 333, 540 P.2d 813 (1975).

A plea of guilty to reckless driving creates issue of fact for the jury within the meaning of the guest statute (64-24-1, 1953 Comp. since declared unconstitutional). Valencia v. Dixon, 83 N.M. 70, 488 P.2d 120 (Ct. App.), cert. denied, 83 N.M. 57, 488 P.2d 107 (1971).

Defendant's plea of guilty to reckless driving is not conclusive evidence of heedlessness or reckless disregard in a civil action under the guest statute (64-24-1, 1953 Comp., since declared unconstitutional). It is an admission, subject to explanation and contradiction, and is to be weighed and considered by the jury in connection with all other evidence in the case to determine whether defendant comes within the "unless" clause of the guest statute. Valencia v. Dixon, 83 N.M. 70, 488 P.2d 120 (Ct. App.), cert. denied, 83 N.M. 57, 488 P.2d 107 (1971).

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" which falls within the "unless" clause of the guest statute (64-24-1, 1953 Comp., since declared unconstitutional). Valencia v. Dixon, 83 N.M. 70, 488 P.2d 120 (Ct. App.), cert. denied, 83 N.M. 57, 488 P.2d 107 (1971).

Driver's utter irresponsibility required under "guest statute". - Absent claim of intentional injury there must be some substantial evidence of a state of mind upon the part of the defendant driver of an utter irresponsibility on the part of defendant or of a conscious abandonment of any consideration for the safety of passengers to convict under a "guest" statute (64-24-1, 1953 Comp., since declared unconstitutional). Carpenter v. Yates, 58 N.M. 513, 273 P.2d 373 (1954).

Improper use of spotlight is factual question. - In an action by guest plaintiff against host driver for injuries from an automobile accident, whether a spotlight was improperly used was a factual question for determination by a jury ("guest statute," 64-24-1, 1953 Comp., was declared unconstitutional). Carpenter v. Yates, 58 N.M. 513, 273 P.2d 373 (1954).

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.

When automobile is under control, 28 A.L.R. 952.

Excuse for exceeding speed limit for automobiles, 29 A.L.R. 883.

Validity of statute or ordinance forbidding running of automobile so as to inflict damage or injury, 47 A.L.R. 255.

What amounts to reckless driving within statute making reckless driving of automobile a criminal offense, 86 A.L.R. 1273, 52 A.L.R.2d 1337.

Homicide or assault in connection with operation of automobile at unlawful speed, 99 A.L.R. 756.

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.

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, 88 N.M. 267, 539 P.2d 1029 (Ct. App. 1975).

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, 42 N.M. 500, 82 P.2d 274 (1938).

Evidence of intoxication need not be sufficient to support a conviction for driving while under the influence pursuant to 66-8-102 NMSA 1978 in order to be admissible in a prosecution for violation of 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, 88 N.M. 267, 539 P.2d 1029 (Ct. App. 1975).

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, 88 N.M. 267, 539 P.2d 1029 (Ct. App. 1975).

"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, 66 N.M. 273, 347 P.2d 166 (1959).

B. HOMICIDE BY VEHICLE.

Quantum of proof required for conviction of homicide by vehicle while driving recklessly would be similar to that required for a conviction of involuntary manslaughter under prior law. State v. Sandoval, 88 N.M. 267, 539 P.2d 1029 (Ct. App. 1975).

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, 41 N.M. 150, 65 P.2d 869 (1937).

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, 42 N.M. 500, 82 P.2d 274 (1938).

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, 42 N.M. 500, 82 P.2d 274 (1938).

C. ILLUSTRATIONS.

Going up incline on wrong side of road is 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, 58 N.M. 205, 269 P.2d 751 (1954).

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, 87 N.M. 437, 535 P.2d 644 (Ct. App.), cert. denied, 87 N.M. 450, 535 P.2d 657 (1975).

"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, 88 N.M. 267, 539 P.2d 1029 (Ct. App. 1975).

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, 88 N.M. 16, 536 P.2d 280 (Ct. App. 1975).

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, 66 N.M. 273, 347 P.2d 166 (1959).

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, 42 N.M. 514, 82 P.2d 282 (1938).

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, 92 N.M. 272, 587 P.2d 50 (Ct. App.), cert. denied, 92 N.M. 260, 586 P.2d 1089 (1978).

Words of section are clear and definite, and give fair warning of the proscribed activity. State v. Baldonado, 92 N.M. 272, 587 P.2d 50 (Ct. App.), cert. denied, 92 N.M. 260, 586 P.2d 1089 (1978).

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, 92 N.M. 272, 587 P.2d 50 (Ct. App.), cert. denied, 92 N.M. 260, 586 P.2d 1089 (1978).

Definition of "careless driving" encompasses driving straight through an intersection with one's turn signal on. State v. Benjamin C., 109 N.M. 67, 781 P.2d 795 (Ct. App.), cert. denied, 109 N.M. 54, 781 P.2d 782 (1989).

"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 (1998).

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 (1998).

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, 116 N.M. 83, 860 P.2d 213 (Ct. App. 1993), overruled on other grounds, State v. Yarborough, 1996-NMSC-068, 122 N.M. 596, 930 P.2d 131 (1996).

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, 120 N.M. 669, 905 P.2d 209 (Ct. App. 1995), aff'd, 1996-NMSC-068, 122 N.M. 596, 930 P.2d 131.

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.

Magistrate could try offenses under section. - Prior to the 1973 amendment to 35-3-4 NMSA 1978 the magistrate court had jurisdiction to try misdemeanors in the Motor Vehicle Code including the careless driving statute, this section, unless the penalty for the offense specifically imposes a maximum fine of more than $100 and/or six months imprisonment. 1969 Op. Att'y Gen. No. 69-133.

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.

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.

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 [66-1-1 NMSA 1978], "penalty assessment misdemeanor" means violation of any of the following listed sections of the NMSA 1978 for which, except as provided in Subsection D of this section, the listed penalty assessment is established:

COMMON NAME OF OFFENSE	SECTION VIOLATED	PENALTY ASSESSMENT
Permitting unlicensed minor to drive	66-5-40	$ 10.00
Failure to obey sign	66-7-104	10.00
Failure to obey signal	66-7-105	10.00
Speeding	66-7-301	
(1) up to and including ten miles an hour over the speed limit		15.00
(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	10.00
Speeding	66-7-306	15.00
Improper starting	66-7-324	10.00
Improper backing	66-7-354	10.00
Improper lane	66-7-308	10.00
Improper lane	66-7-313	10.00
Improper lane	66-7-316	10.00
Improper lane	66-7-	

317 10.00
Improper lane 66-7-
319 10.00
Improper passing 66-7-309 through 66-7-
312 10.00
Improper passing 66-7-
315 10.00
Controlled access violation 66-7-
320 10.00
Controlled access violation 66-7-
321 10.00
Improper turning 66-7-
322 10.00
Improper turning 66-7-
323 10.00
Improper turning 66-7-
325 10.00
Following too closely 66-7-
318 10.00
Failure to yield 66-7-328 through 66-7-
332 10.00
Failure to yield 66-7-
332.1 25.00
Pedestrian violation 66-7-
333 10.00
Pedestrian violation 66-7-
340 10.00
Failure to stop 66-7-342 and 66-7-344 through 66-7-
346 10.00
Railroad-highway grade crossing violation 66-7-341 and 66-7-
343 10.00
Passing school bus 66-7-
347 100.00
Failure to signal 66-7-325 through 66-7-
327 10.00
Failure to secure load 66-7-
407 100.00
Operation without oversize-overweight permit 66-7-
413 50.00
Improper equipment 66-3-
801 10.00
Improper equipment 66-3-
901 20.00
Improper emergency signal 66-3-853 through 66-3-

857	10.00
Operation interference	66-7-357
	5.00
Littering	66-7-364
	300.00
Improper parking	66-7-349 through 66-7-352 and 66-7-353
	5.00
Improper parking	66-7-352.5
	50.00
Improper parking	66-3-852
	5.00
Failure to dim lights	66-3-831
	10.00
Riding in or towing occupied house trailer	66-7-366
	5.00
Improper opening of doors	66-7-367
	5.00
No slow-moving vehicle emblem or flashing amber light	66-3-887
	5.00
Open container - first violation	66-8-138
	25.00.

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 (4) 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.

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.

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 also 35-6-1 NMSA 1978, 66-8-116.3 NMSA 1978, and 66-8-119 NMSA 1978.

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.

The 1988 amendment, effective March 8, 1988, substituted "ten dollars ($10.00)" for "five dollars ($5.00)" in Subsection D and added Subsection E.

1989 amendments. - Laws 1989, ch. 316, § 1, effective June 16, 1989, in Subsection A adding the offense of possession or consumption of alcoholic beverages in open containers while driving a motor vehicle at the end of the table; and in Subsection B making minor stylistic changes in the introductory paragraph and in Paragraphs (1) and (2), and adding Paragraph (3), was approved on April 7, 1989. Laws 1989, ch. 317, § 3, also effective June 16, 1989, inserting the offense of child not in restraint device or safety belt in the table in Subsection A, was also approved on April 7, 1989. Laws 1989, ch. 318, § 34, effective July 1, 1989, deleting Subsections D and E, was also approved on April 7, 1989. Laws 1989, ch. 319, § 11, also effective July 1, 1989, in Subsection A, for the listed offense of speeding, deleting "and 66-7-302" from the Section Violated column, adding entries for the offenses of failure to secure load and operation without oversize, overweight permit, and, for the offense of improper equipment, for the Penalty Assessment column substituting "50.00" for "10.00"; and deleting Subsections D and E, was also approved on April 7, 1989. However, Laws 1989, ch. 320, § 4, also effective July 1, 1989, adding the entry for failure to obey sign; under the entries for speeding, in Item (1), substituting "up to and including ten miles an hour" for "up to fifteen miles an hour", in Item (2), substituting "from eleven up to and including fifteen miles an hour" for "from fifteen to twenty-five miles an hour", while in the Penalty column therefor substituting "30.00" for "25.00", and adding Items (3) and (4) and the Penalty Assessments therefor; in the entry for passing school bus, in the Penalty column, substituting "100.00" for "25.00"; in the entry for improper equipment, in the Penalty column, substituting "200.00" for "100.00"; and deleting 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, was approved later on April 7, 1989.

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 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 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 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 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 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.

System of penalty assessment procedures is entirely statutory in origin. 1969 Op. Att'y Gen. No. 69-88.

Violator cannot reconsider acceptance of assessment. - Neither by textual implication nor by practical operation can 64-22-4 through 64-22-4.2, 1953 Comp. (similar to this section, 66-8-117, and former 66-8-118 NMSA 1978), be interpreted as

providing for a violator's reconsideration of his acceptance of penalty assessment. 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.

Violator deals with courts' administrative office in Santa Fe. - Sections 64-22-4 to 64-22-12, 1953 Comp. (similar to, or the same as, this section and 66-8-117 to 66-8-133 NMSA 1978), which establish a method whereby certain noncontested traffic violations may be satisfied without a court appearance by the violator, contemplate that the violator who chooses to accept the penalty assessment will deal directly with the administrative office of the courts in Santa Fe, and not with an individual magistrate. 1969 Op. Att'y Gen. No. 69-88.

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.

66-8-116.1. Penalty assessment misdemeanors; oversize load.

As used in the Motor Vehicle Code [Articles 1 to 8 of Chapter 66 NMSA 1978] and the Motor Carrier Act, "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	$ 25.00
Oversize load 3,001 to 4,000 pounds	66-7-411	40.00
Oversize load 4,001 to 5,000 pounds	66-7-411	75.00
Oversize load 5,001 to 6,000 pounds	66-7-411	125.00
Oversize load 6,001 to 7,000		

pounds	66-7-411
	200.00
Oversize load 7,001 to 8,000 pounds	66-7-411
	275.00
Oversize load 8,001 to 9,000 pounds	66-7-411
	350.00
Oversize load 9,001 to 10,000 pounds	66-7-411
	425.00
Oversize load over 10,000 pounds	66-7-411
	500.00.

History: 1978 Comp., § 66-8-116.1, enacted by Laws 1989, ch. 319, § 12.

ANNOTATIONS

Motor Carrier Act. - See 65-2-80 NMSA 1978 and notes thereto.

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 [Chapter 65, Article 2 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 the listed penalty is established:

A. GENERAL

COMMON NAME OF OFFENSE	SECTION VIOLATED	PENALTY ASSESSMENT
Failure to register motor carrier	65-1-12	$ 100.00
Failure to carry identification card	65-1-26	50.00
Failure to comply with public regulation commission rules and regulations	Section 7 [65-2A-7 NMSA 1978] of the Motor Carrier Act	50.00
Failure to carry single state		

registration receipt issued by a base state		Section 7 [65-2A-7 NMSA 1978] of the Motor Carrier Act
	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	
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		65-3-11
	100.00	
Exceeding the 15-hour on duty rule		65-3-11
	100.00	
Exceeding the 60 hours in 7 days on duty rule		65-3-11
	100.00	
Exceeding 70 hours in 8 days on duty rule		65-3-11
	100.00	
False log book		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.	

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.

ANNOTATIONS

Cross references. - For references to state corporation commission being construed as references to the public regulation commission, see 8-8-21 NMSA 1978.

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.

The 1995 amendment, effective June 16, 1995, designated the existing provisions as Subsection A and added Subsections B through D.

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.

Motor Carrier Act. - See 65-2-80 NMSA 1978 and notes thereto.

66-8-116.3. Penalty assessment misdemeanors; additional fees.

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 two dollars ($2.00), which shall be credited to the judicial education fund;

E. a brain injury services fee of five dollars ($5.00), which shall be credited to the brain injury services fund; and

F. a court facilities fee as follows:

in a county with a metropolitan court $24.00;

in any other county 10.00

History: 1978 Comp., § 66-8-116.3, enacted by 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.

ANNOTATIONS

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 1990 amendment, effective July 1, 1990, added Subsection C and made a minor stylistic change.

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 1996 amendment substituted "ten dollars (10.00)" for "three dollars ($3.00)" in Subsection B. Laws 1996, ch. 41 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 15, 1996, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

The 1997 amendments. - Identical amendments to this section, enacted by Laws 1997, ch. 242, § 5 and Laws 1997, ch. 247, § 2, effective July 1, 1997, added Subsection E.

The 1998 amendment, effective July 1, 1998, added Subsection F and made minor related stylistic changes.

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 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.

Compiler's notes. - Identical versions of this section were enacted by Laws 1989, ch. 318, § 35, Laws 1989, ch. 319, § 14, and Laws 1989, ch. 320, § 5. The section is treated as enacted by Laws 1989, ch. 320, § 5.

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

Cross references. - For the definition of "convicted" and "conviction" applicable to this section, see 66-5-28 NMSA 1978.

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.

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. 1969 Op. Att'y Gen. No. 69-88.

Motorist bound by unambiguous terms concerning discharge. - Once the election in favor of penalty assessment is made, an obligation is incurred which is bound by unambiguous terms concerning time, place and form of discharge. 1969 Op. Att'y Gen. No. 69-88.

Motorist cannot reconsider. - Neither by textual implication nor by practical operation can 64-22-4 through 64-22-4.2, 1953 Comp. (similar to this section, 66-8-116 and former 66-8-118 NMSA 1978), be interpreted as providing for a violator's reconsideration of 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, repeals 66-8-118 NMSA 1978, 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 F 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 brain injury services fund; and

(6) Subsection F of Section 66-8-116.3 NMSA 1978 to the state treasurer for credit to the court facilities 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.

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 also 35-6-1 NMSA 1978, and 66-8-116.3 NMSA 1978.

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".

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 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 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 1998 amendment, effective July 1, 1998, substituted "F" for "E" in Subsection A, and added Paragraph B(6), making minor related stylistic changes.

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 [Articles 1 to 8 of Chapter 66, except 66-7-102.1 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

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 [Articles 1 to 8 of Chapter 66, except 66-7-102.1 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, 101 N.M. 399, 683 P.2d 516 (Ct. App. 1984).

The 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. 1959-60 Op. Att'y Gen. No. 60-34.

Peace officers can make warrantless arrest when probable cause offense committed in presence. - 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. 1961-62 Op. Att'y Gen. No. 61-117.

Warrantless arrest for commission of a felony. - In situations involving violations of the Motor Vehicle Code (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. 1961-62 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 [Articles 1 to 8 of Chapter 66, except 66-7-102.1 NMSA 1978] or other law relating to motor vehicles punishable as a misdemeanor, the arresting officer, using the uniform traffic citation, 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 him 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, 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, Santa Fe to the arrested person and release him 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 and give a copy to the arrested person after requiring his 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 his release, the arrested person must give his 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, the Criminal Code, the Liquor Control Act or other New Mexico law may use the uniform traffic citation, issued pursuant to procedures outlined in Section 31-1-6 NMSA 1978, Subsections B through E, in lieu of taking him to jail.

History: 1953 Comp., § 64-8-123, enacted by Laws 1978, ch. 35, § 531; 1981, ch. 360, § 11; 1989, ch. 320, § 6.

ANNOTATIONS

Cross references. - For penalty assessments, see 66-8-116 to 66-8-119 NMSA 1978.

The 1989 amendment, effective July 1, 1989, added Subsection F.

Criminal Code. - See 30-1-1 NMSA 1978 and notes thereto.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

Motor Carrier Act. - See 65-2-80 NMSA 1978 and notes thereto.

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).

Arresting officer designates court and offender submits to its jurisdiction. - Whenever the procedure outlined in 64-22-8, 1953 Comp. (similar to this section), 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. 1957-58 Op. Att'y Gen. No. 58-122.

Court within county where offense occurred. - The arresting officer may designate which court the arresting 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. 1959-60 Op. Att'y Gen. No. 60-199.

Magistrate designated on citation thereby acquires and retains jurisdiction. - Assuming that the arresting officer complies with Subsection B of 64-22-8, 1953 Comp. (similar to this section), 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. 1957-58 Op. Att'y Gen. No. 58-122.

Offender may not disregard designation. - Where a police officer issues a traffic citation to an offender listing thereon the justice of the peace (now magistrate) before whom the offender is to appear, the offender may not disregard this and appear before a justice of the peace of his own choosing. 1957-58 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. 1959-60 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. 1959-60 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. 1959-60 Op. Att'y Gen. No. 60-34.

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 (1998).

66-8-124. Arresting officer to be in uniform.

A. No person shall be arrested for violating the Motor Vehicle Code [Articles 1 to 8 of Chapter 66, except 66-7-102.1 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 his 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 handicapped zones. Prior to the commissioning of any security guard the employer of the security guard shall agree in writing with the local police agency to said 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 his 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.

ANNOTATIONS

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.

"Uniform" for purposes of this section means commission of office and a prominently displayed badge. 1966 Op. Att'y Gen. No. 66-92.

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, 118 N.M. 160, 879 P.2d 792 (Ct. App. 1994).

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, 91 N.M. 67, 570 P.2d 605 (Ct. App.), cert. denied, 91 N.M. 4, 569 P.2d 414 (1977).

Limitation on arresting power of nonuniformed officer. - Officer who observes crime while out of uniform cannot effect valid warrantless misdemeanor arrest by calling uniformed officer, who had not observed the crime, to the scene to make the arrest. State v. Warren, 103 N.M. 472, 709 P.2d 194 (Ct. App. 1985).

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

Legislative intent was adoption of a method designed to foreclose the tourist from evading a traffic citation by the simple expediency of leaving the confines of this state. It would be a rare case indeed when a New Mexico resident would flee the jurisdiction of

this state to avoid payment of a fine for a traffic violation. 1961-62 Op. Att'y Gen. No. 61-117.

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, 108 N.M. 737, 779 P.2d 114 (Ct. App. 1989).

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, 118 N.M. 160, 879 P.2d 792 (Ct. App. 1994).

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.

When and where warrantless arrest may be made. - If the requirements of Subsection B of 64-22-8.2, 1953 Comp. (now repealed, but similar to 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, 91 N.M. 390, 574 P.2d 1018 (Ct. App. 1978).

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, 98 N.M. 453, 649 P.2d 756 (Ct. App.), aff'd, 98 N.M. 316, 648 P.2d 774 (1982).

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, 98 N.M. 453, 649 P.2d 756 (Ct. App.), aff'd, 98 N.M. 316, 648 P.2d 774 (1982).

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, 91 N.M. 67, 570 P.2d 605 (Ct. App.), cert. denied, 91 N.M. 4, 569 P.2d 414 (1977).

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.

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, 108 N.M. 737, 779 P.2d 114 (Ct. App. 1989).

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.

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 misdemeanor for any person to violate his 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.

ANNOTATIONS

Cross references. - For the penalty for a misdemeanor, see 66-8-7 NMSA 1978.

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. 1961-62 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 [Articles 1 to 8 of Chapter 66, except 66-7-102.1 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

Physical arrest for vehicle code misdemeanor is method "prescribed by law". - Since, under the common-law rule in effect in this jurisdiction, peace officers may make an arrest without a warrant for a misdemeanor committed in their presence, a physical arrest for violating the Motor Vehicle Code is a method "prescribed by law." 1961-62 Op. Att'y Gen. No. 61-117.

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. 1961-62 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, 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 of 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, and these electronic versions may be used in the issuance of citations.

D. Any entity that wishes to submit uniform traffic citations required to be submitted to the department by electronic means must secure the prior permission of the department.

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.

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 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.

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.

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. 1961-62 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 repeals 66-8-129 NMSA 1978, as amended by Laws 1981, ch. 360, § 13, relating to form on the back of uniform traffic citations, effective July 1, 1990. For provisions of former section, see 1987 Replacement Pamphlet. 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 shall be used by all state and local agencies enforcing laws and ordinances relating to motor vehicles. Any 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 [Articles 1 to 8 of Chapter 66, except 66-7-102.1 NMSA 1978]. 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, 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 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. 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.

C. Each agency shall provide itself with copies conforming exactly in size and format with the uniform traffic citation prescribed by the director, and any alterations 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.

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.

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".

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".

A village marshal can issue a uniform traffic citation for a violation of a village traffic ordinance. 1961-62 Op. Att'y Gen. No. 61-3.

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. 1961-62 Op. Att'y Gen. No. 61-3.

Village marshals and deputies within term "traffic enforcement agency". - Since village marshals and their deputies are given power to enforce all village ordinances, and to arrest for violations of state laws, then such officers are within the term "traffic

enforcement agency" and may issue uniform traffic citations for violations of state motor vehicle laws. 1961-62 Op. Att'y Gen. No. 61-3.

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

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.

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.

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. State v. Wasson, 1998-NMCA-087, 125 N.M. 656, 964 P.2d 820, cert. denied, 125 N.M. 322, 961 P.2d 167 (1998).

Uniform traffic citation does not serve as complaint if officer who issued the citation is unable to reach the justice of the peace (now magistrate) prior to the violator being stopped for failure to appear as promised. 1968 Op. Att'y Gen. No. 68-84.

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 [Articles 1 to 8 of Chapter 66, except 66-7-102.1 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

Cross references. - For the penalty for a misdemeanor, see 66-8-7 NMSA 1978.

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.

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. 1961-62 Op. Att'y Gen. No. 61-3.

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 [Articles 1 to 8 of Chapter 66, except 66-7-102.1 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, 119 N.M. 739, 895 P.2d 261 (Ct. App. 1995).

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. Within ten days of the later of entry of judgment and sentence or failure to appear on a charge of violating 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 judgment and sentence or failure to appear 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 fine or jail sentence or both, forfeiture of bail or dismissal of the charge;

(4) an itemization of 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 his right to counsel and, if represented, the name and address of counsel.

C. The abstract of record prepared and forwarded under Subsection B 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 B of this section may be transmitted electronically to the department. 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.

D. When the uniform traffic citation is used, the court shall provide the information required by Subsection B of this section in the manner prescribed by the department.

E. 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.

F. The failure or refusal of any judicial officer to comply with this section is misconduct in office and grounds for removal.

G. 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 twenty-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.

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.

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 court forwarding license to division, see 66-5-28 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 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.

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 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 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.

Severability clauses. - Laws 1993, ch. 166, § 17 provides for the severability of the act if any part or application thereon is held invalid.

Motor Vehicle Code. - See 66-1-1 NMSA 1978 and notes thereto.

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 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.

Violations of city ordinances reported by police magistrate. - In view of 64-22-15, 1953 Comp. (similar to this section), the reports of traffic violations handled by a police magistrate, which would be violations of city ordinances, are to be made to the motor vehicle department (now motor vehicle division), except for the conviction for illegal parking or standing of a vehicle. 1953-54 Op. Att'y Gen. No. 6030.

66-8-136. Repealed.

ANNOTATIONS

Repeals. - Laws 1995, ch. 135, § 29 repeals 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 1994 Replacement Pamphlet.

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 [Articles 1 to 8 of Chapter 66, except 66-7-102.1 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 generally, see 35-1-1 NMSA 1978 et seq.

This section provides that a 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: 1978 Comp., § 66-8-137.1, enacted by Laws 1981, ch. 360, § 14.

66-8-137.2. Nonresident Violator Compact; definitions.

As used in the Nonresident Violator Compact [66-8-137.1 NMSA 1978]:

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: 1978 Comp., § 66-8-137.2, enacted by 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: 1978 Comp., § 66-8-137.3, enacted by Laws 1981, ch. 360, § 16.

66-8-137.4. Bilateral agreements; noncompact jurisdictions; authority.

A. In addition to the Nonresident Violator Compact [66-8-137.1 NMSA 1978], 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: 1978 Comp., § 66-8-137.4, enacted by 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 his possession on his person, 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;

(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.

A utility or glove compartment shall be deemed to be within the area occupied by the driver and passengers. 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.

D. The provisions of this section do not apply to:

(1) any person who, upon the recommendation of a doctor, carries alcoholic beverages in that person's motor vehicle for medicinal purposes; or

(2) any clergyman or his agent who carries alcoholic beverages for religious purposes in the clergyman's or agent's motor vehicle.

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.

ANNOTATIONS

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.

Repeals and reenactments. - Laws 1989, ch. 316, § 2 repeals 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 enacts the above section, effective June 16, 1989. For provisions of former section, see 1987 Replacement Pamphlet.

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).

2001 amendments. - Laws 2001, ch. 120, § 1, effective June 15, 2001, inserting "not" preceding "occupied by passengers" in Paragraph C(4); and deleting 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," was approved April 2, 2001. However, this section was also amended by Laws 2001, ch. 28, § 1, effective July 1, 2001, which would have amended this section to read as follows:

"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 his possession on his person, 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;

"(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 occupied by passengers.

"A utility or glove compartment shall be deemed to be within the area occupied by the driver and passengers. 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 or proper legal authority.

"(D) The provisions of this section do not apply to:

"(1) any person who, upon the recommendation of a doctor, carries alcoholic beverages in that person's motor vehicle for medicinal purposes; or

"(2) any clergyman or his agent who carries alcoholic beverages for religious purposes in the clergyman's or agent's motor vehicle."

Because Laws 2001, ch. 28, § 1 was approved on March 14, 2001, this section is set out as amended by Laws 2001, ch. 120, § 1. See 12-1-8 NMSA 1978.

Violation of 64-22-17, 1953 Comp. (similar to this section) was a misdemeanor. 1969 Op. Att'y Gen. No. 69-22.

Minor under 18 cannot be tried by magistrate. - If the minor violating 64-22-17, 1953 Comp. (similar to this section), is under the age of 18 a magistrate would not have jurisdiction to try him. 1969 Op. Att'y Gen. No. 69-22.

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. For provisions of former section, see 1987 Replacement Pamphlet.

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 repeals 66-8-140 NMSA 1978, as amended by Laws 1989, ch. 316, § 4, relating to definition of "alcoholic beverages", effective July 1,

1990. For provisions of former section, see 1989 Cumulative Supplement. 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 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 1989 amendment, effective July 1, 1989, designated the formerly undesignated provisions as Subsection A, making a minor stylistic change therein, and added Subsection B.

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."

Motor Vehicle Code. - See 66-1-1 NMSA 1978 and notes thereto.

ARTICLE 9
SNOWMOBILES

66-9-1. Short title.

This act may be cited as the "Snowmobile Act."

History: 1953 Comp., § 64-36-1, enacted by Laws 1971, ch. 177, § 1.

ANNOTATIONS

Cross references. - For restrictions on vehicle use damaging to wildlife reproduction, management or habitat, see 17-6-3 to 17-6-6 NMSA 1978.

Meaning of "this act". - The term "this act" refers to Laws 1971, ch. 177, the provisions of which are presently compiled as 66-9-1, 66-9-2, 66-9-8, 66-9-9, and 66-9-11 to 66-9-13 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - Liability for injury or death allegedly caused by defect in snowmobile or other recreational-purpose vehicle, 81 A.L.R.3d 394, 66 A.L.R.4th 622.

66-9-2. Definitions.

As used in the Snowmobile Act:

A. "snowmobile" means any motorized vehicle designed for operation on snow or ice, principally for recreational purposes, which uses sled-type runners or skis and an endless-belt tract, or a similar means of contact with the surface upon which it is operated, but does not include any farm implement or any military or law enforcement vehicle;

B. "owner" means any person, other than a lienholder, having title by a bill of sale or other proof of ownership of a snowmobile;

C. "operator" means any person who operates or is in actual physical control of a snowmobile; and

D. "department" means the department of game and fish.

History: 1953 Comp., § 64-36-2, enacted by Laws 1971, ch. 177, § 2.

ANNOTATIONS

Snowmobile Act. - See 66-9-1 NMSA 1978 and notes thereto.

66-9-3. Repealed.

ANNOTATIONS

Repeals. - Laws 1985, ch. 40, § 1 repeals 66-9-3 NMSA 1978, as amended by Laws 1975, ch. 42, § 1, relating to snowmobile registration, effective June 14, 1985.

66-9-4. Rules and regulations.

The department shall adopt and file, in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978], rules and regulations necessary to carry out and enforce the provisions of the Snowmobile Act, including regulations setting out procedures for notice and public hearings.

History: 1953 Comp., § 64-36-3.1, enacted by Laws 1973, ch. 86, § 1.

ANNOTATIONS

Snowmobile Act. - See 66-9-1 NMSA 1978 and notes thereto.

66-9-5 to 66-9-7. Repealed.

ANNOTATIONS

Repeals. - Laws 1985, ch. 40, § 1 repeals 66-9-5 to 66-9-7 NMSA 1978, as amended by Laws 1971, ch. 177, §§ 4 to 6 and amended by Laws 1975, ch. 42, § 2, relating to registration, exemption from registration, and dealer demonstration certificates for snowmobiles, effective June 14, 1985.

66-9-8. Equipment and operation; general provisions.

A. Operators of snowmobiles shall not be required to be licensed.

B. No person shall operate a snowmobile:

(1) in a careless, reckless or negligent manner so as to endanger the person or property of another, including a guest or passenger;

(2) while under the influence of intoxicating beverages, narcotic or other drugs to a degree that renders him incapable of reasonable operation;

(3) when conditions limit visibility to five hundred feet or less, unless such snowmobile is equipped with one or more headlights of sufficient candlepower to light objects at a distance of one hundred fifty feet and 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;

(4) so that the exhaust of the motor makes an excessive or unusual noise, except while participating in a sanctioned racing event;

(5) in pursuit of any specie of animal or bird protected by law; or

(6) having any firearm in his possession unless it has no round in the chamber, with the action closed; or with any bow in his possession unless it is unstrung.

C. No snowmobile may be sold in this state after July 1, 1972 unless it is equipped with a muffler capable of reducing engine noise to eighty-six decibels on the "A" scale at a distance of fifty feet.

D. No snowmobile manufactured after July 1, 1973, may be sold or offered for sale in this state unless it is equipped in such a way as to limit noise produced by the snowmobile to not more than eighty-two decibels as measured on the "A" scale at a distance of fifty feet.

E. No snowmobile manufactured after July 1, 1975, may be sold or offered for sale in this state unless it is equipped in such a way as to limit noise produced by the snowmobile to not more than seventy-eight decibels as measured on the "A" scale at a distance of fifty feet.

History: 1953 Comp., § 64-36-7, enacted by Laws 1971, ch. 177, § 7; 1973, ch. 198, § 1.

ANNOTATIONS

Cross references. - For protected wildlife, see 17-2-2 NMSA 1978 et seq.

Am. Jur. 2d, A.L.R. and C.J.S. references. - Snowmobile operation as DWI or DUI, 56 A.L.R.4th 1092.

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.

66-9-9. Operation on streets or highways.

A. No person shall operate a snowmobile on any limited access highway or freeway at any time.

B. Snowmobiles may cross streets or highways if the crossings are made after coming to a complete stop prior to entering the roadway. Snowmobiles 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. No person shall operate a snowmobile unless:

(1) a lighted headlamp and a red or amber taillight, as defined in Subsection B of Section 66-9-8 NMSA 1978, is displayed while operating the snowmobile on or along any roadway during the hours of darkness; and

(2) where conditions permit, the snowmobile is operated on the righthand side of any roadway, parallel, but not closer than ten feet, to the inside of the plow bank.

D. Snowmobiles may be operated on public roads, streets or highways only when:

(1) the public roads, streets or highways are closed to automotive traffic or are not regularly plowed or maintained;

(2) the operation is authorized during periods of emergency by the county sheriff, the New Mexico state police, the governor or the office of civil and defense mobilization, provided travel by conventional vehicles is not permitted or adequate precautions to protect such traffic are taken;

(3) special events of limited duration are conducted according to a prearranged schedule approved by the governing body having jurisdiction over the streets or roads and traffic control assistance is provided; or

(4) permitted by local ordinance or resolution adopted by the governing body of a municipality or county, which ordinance or resolution regulates streets and highways under its jurisdiction.

History: 1953 Comp., § 64-36-8, enacted by Laws 1971, ch. 177, § 8; 1983, ch. 271, § 2.

ANNOTATIONS

Snowmobiles may not generally use highway right-of-way between the edge of the roadway and the adjacent fence line or right-of-way boundary when the highway is open as usual to vehicular traffic. 1971 Op. Att'y Gen. No. 71-108.

66-9-10. Repealed.

ANNOTATIONS

Repeals. - Laws 1985, ch. 40, § 1, repeals 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. Accidents and accident reports.

Any operator of a snowmobile involved in an accident resulting in injuries to, or the death of, any person or resulting in damage to public or private property to the extent of fifty dollars ($50.00) or more, shall immediately notify a law enforcement officer or a law enforcement agency of the accident and the facts relating to the accident.

History: 1953 Comp., § 64-36-10, enacted by Laws 1971, ch. 177, § 10.

66-9-12. Enforcement.

Every wildlife conservation officer, state policeman or peace officer of the state or any of its political subdivisions, displaying his badge of office, has the authority to enforce the provisions of the Snowmobile Act, and may require the operator of any snowmobile to produce the certificate of registration and the personal identification of the operator, and may issue citations for violations of the provisions of the Snowmobile Act.

History: 1953 Comp., § 64-36-11, enacted by Laws 1971, ch. 177, § 11.

ANNOTATIONS

Cross references. - For uniform motor vehicle citations, see 66-8-128 to 66-8-134 NMSA 1978.

Snowmobile Act. - See 66-9-1 NMSA 1978 and notes thereto.

66-9-13. Penalties.

Any person who violates the provisions of the Snowmobile Act is guilty of a petty misdemeanor.

History: 1953 Comp., § 64-36-12, enacted by Laws 1971, ch. 177, § 12.

ANNOTATIONS

Cross references. - For the penalty for a petty misdemeanor, see 31-19-1 NMSA 1978.

Snowmobile Act. - See 66-9-1 NMSA 1978 and notes thereto.

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.

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 New Mexico 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 Comps., § 64-35-4, enacted by Laws 1967, ch. 185, § 4; 1993, ch. 68, § 48.

ANNOTATIONS

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 [this article] 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 on June 30 of each year, unless canceled, suspended or revoked sooner. 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.

ANNOTATIONS

Cross references. - For approved driver education courses in high schools, see 22-13-12 NMSA 1978.

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.

The bureau shall:

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 [this article];

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 five thousand dollars ($5,000);

F. suspend or revoke, subject to the procedures prescribed in the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978], 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 and regulations 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 regulation 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.

ANNOTATIONS

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 [this article] 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 [this article] 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 [this article] 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 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.

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.

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 [this article] shall not apply to nonprofit corporations that provide motor vehicle accident prevention courses that fulfill the requirements of Section 59A-32-14 NMSA 1978 and that are engaged in providing courses exclusively for drivers who are fifty-five years of age or older.

History: Laws 1993, ch. 68, § 55.

ANNOTATIONS

Severability clauses. - Laws 1993, ch. 68, § 58 provides for the severability of the act if any part or application thereof is held invalid.

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 [Articles 1 to 8 of Chapter 66, except 66-7-102.1 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 16-2-7 NMSA 1978 in addition to any requirements set up in the Boat Act (66-12-1 to 66-12-5, 66-12-7 to 66-12-22 NMSA 1978). 1959-60 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 [this article] 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.

66-12-3. Definitions.

As used in the Boat Act [Chapter 66, Article 12 NMSA 1978]:

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 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 is set out as amended by Laws 1987, ch. 247, § 5. See 12-1-8 NMSA 1978.

The 1991 amendment, effective June 14, 1991, inserted "energy, minerals and" in Subsection I.

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.

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 [Chapter 66, Article 12 NMSA 1978] 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 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.

The 2000 amendment, effective May 17, 2000, added Subsection C.

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 [this article] 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 [this article].

History: 1978 Comp., § 66-12-5.1, enacted by 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 [this article] 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: 1978 Comp., § 66-12-5.2, enacted by 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: 1978 Comp., § 66-12-5.3, enacted by 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 1987 amendment, effective July 1, 1987, made minor stylistic changes in Subsections A and B, and added Subsections C and D.

The 2003 amendment, effective June 20, 2003, rewrote this section to the extent that a detailed comparison is impracticable.

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 [this article] 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: 1978 Comp., § 66-12-6.1, enacted by 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: 1978 Comp., § 66-12-6.2, enacted by 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: 1978 Comp., § 66-12-6.3, enacted by 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 [this article].

History: 1978 Comp., § 66-12-6.4, enacted by Laws 1987, ch. 247, § 12.

ANNOTATIONS

Meaning of "this act". - The term "this act," referred to in this section, strictly construed means Laws 1987, Chapter 247, which appears as 7-9-22.1, 7-9-23.1, 55-9-302, 66-12-1, 66-12-3, 66-12-4, 66-12-5.2, and 66-12-6 to 66-12-6.4. The term more likely refers to the Boat Act, which appears as Chapter 66, Article 12 NMSA 1978.

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 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is 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 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is 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 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is 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 [Chapter 66, Article 12 NMSA 1978] 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 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is 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.

66-12-8. Exemptions from numbering provisions of the Boat Act.

A motorboat shall not be required to be numbered under the Boat Act [this article] 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 1987 amendment purported to amend this section but made no change.

The 1991 amendment, effective June 14, 1991, purported to amend this section but made no changes.

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".

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.

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 [this article] 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 [this article].

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 reference to the state parks division was inserted by the compiler. The bracketed material was not enacted by the legislature and is not a part of the law. See 9-5A-6.1 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 12 Am. Jur. 2d Boats and Boating §§ 4 to 22.

66-12-19. Filing of regulations.

Regulations adopted by the state park and recreation division [state parks division] pursuant to the Boat Act [this article] 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 reference to the state parks division was inserted by the compiler. The bracketed material was not enacted by the legislature and is not a part of the law. See 9-5A-6.1 NMSA 1978.

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 [this article], 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" in this section 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.

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".

Emergency clauses. - Laws 1997, ch. 125, § 14 makes the act effective immediately. Approved April 9, 1997.

Compiler's notes. - The phrase "this 1997 act" refers to Laws 1997, ch. 125, which amended this section.

66-12-21. Disposition of fines.

All money collected as fines for the violation of the provisions of the Boat Act [this article], 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 reference to the state parks division was inserted by the compiler. The bracketed material was not enacted by the legislature and is not a part of the law. See 9-5A-6.1 NMSA 1978.

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 [this article] 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.

66-12-23. Penalties.

Any person who violates any provision of the Boat Act [this article] or any regulation of the state park and recreation division [state parks division] of the energy, minerals and natural resources department promulgated pursuant to that act is guilty of a misdemeanor and shall be punished by a fine of not less than fifty dollars ($50.00) nor

more than five hundred dollars ($500) or by imprisonment for not more than thirty days or both.

History: 1953 Comp., § 75-35-22, enacted by Laws 1963, ch. 45, § 9; 1983, ch. 41, § 4; 1987, ch. 234, § 44.

ANNOTATIONS

Bracketed material. - The bracketed reference to the state parks division was inserted by the compiler. The bracketed material was not enacted by the legislature and is not a part of the law. See 9-5A-6.1 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. Boat act violation; penalty.

A person who violates any provision of the Boat Act [Chapter 66, Article 12 NMSA 1978] is guilty of a misdemeanor and shall be punished by a fine of three hundred dollars ($300) or by imprisonment for at least thirty days, or both.

History: Laws 2003, ch. 410, § 8.

ANNOTATIONS

Effective dates. - Laws 2003, ch. 410 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 2003, 90 days after adjournment of the legislature.

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 makes the section effective on July 1, 2003.

66-13-2. Definitions.

As used in the Boating While Intoxicated Act [66-13-1 to 66-13-13 NMSA 1978]:

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 makes the section effective on 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 [66-13-1 to 66-13-13 NMSA 1978], 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 makes the section effective on July 1, 2003.

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 [66-13-3 NMSA 1978] 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 makes the section effective on 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 makes the section effective on 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 makes the section effective on 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 [66-13-1 to 66-13-13 NMSA 1978] 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 makes the section effective on 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 [66-13-1 to 66-13-13 NMSA 1978], 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 [66-13-1 to 66-13-13 NMSA 1978], 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 makes the section effective on 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 [66-13-1- to 66-13-13 NMSA 1978], 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 makes the section effective on 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 [66-13-1 to 66-13-13 NMSA 1978] 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 of the Boating While Intoxicated Act [66-13-1 to 66-13-13 NMSA 1978].

History: Laws 2003, ch. 241, § 10.

ANNOTATIONS

Effective dates. - Laws 2003, ch. 241, § 16 makes the section effective on 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 [66-13-1 to 66-13-13 NMSA 1978] 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 makes the section effective on 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 [66-13-1 to 66-13-13 NMSA 1978] 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 makes the section effective on 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 [66-13-1 to 66-13-13 NMSA 1978].

History: Laws 2003, ch. 241, § 13.

ANNOTATIONS

Effective dates. - Laws 2003, ch. 241, § 16 makes the section effective on July 1, 2003.